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No. 85-781

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In the Supreme Court of the United States

OCTOBER TERM, 1986

FRANK G. BURKE, ACTING ARCHIVIST OF THE UNITED STATES, AND

RONALD GEISLER, EXECUTIVE CLERK OF THE WHITE HOUSE,
PETITIONERS

v.

MICHAEL D. BARNES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE SPEAKER AND BIPARTISAN LEADERSHIP GROUP OF THE UNITED STATES HOUSE OF REPRESENTATIVES

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly recognized the standing of the Senate and House parties in this case to redress the nullification of the lawmaking process when the Executive's asserted pocket veto of H.R. 4042, and the petitioners' ensuing refusal to publish the bill as a law, have resulted in an impasse between the Branches.

2. Whether the court of appeals correctly held that an asserted pocket veto of H.R. 4042 was invalid because the House of Representatives had made adequate provision for return of the bill.

3. Whether the respondents may continue to seek relief from the Executive's refusal to publish H.R. 4042 as a law.

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OPINIONS BELOW

The opinion of the court of appeals, Appendix to Petition for a Writ of Certiorari ("App.") 1a–118a, is reported at *Barnes v. Kline,* 759 F.2d 21. The memorandum of the district court, App. 119a–132a, is reported at *Barnes v. Carmen,* 582 F. Supp. 163.

JURISDICTION

The judgment of the court of appeals was entered on August 29, 1984, App. 137a–138a, and a petition for rehearing was denied on August 7, 1985, App. 133a–134a. The petition for a writ of certiorari was filed on Novem-

ber 5, 1985, and was granted on March 3, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 7, Clauses 2 and 3, and Article III, Section 2, Clause 1 of the Constitution, and H.R. 4042, 98th Cong., 1st Sess. (1983), are reproduced in the Brief For the Petitioners ("Exec. Br.") in its appendix at 1a–2a.

STATEMENT

1. On November 18, 1983, Congress presented the President with H.R. 4042, 98th Cong., 1st Sess., a bill concerning human rights certification for El Salvador, which had been passed by majority vote in both Houses. *See Barnes v. Kline,* App. 4a–5a, and App. 141a–145a (text of bill). H.R. 4042 represented the culmination of years of Congressional consideration. In 1981, following thorough consideration at the committee level, on the floor, and in conference,[1] Congress required as a prerequisite for further military aid to El Salvador that the President certify progress in human rights, particularly regarding "investigat[ion] [of] the murders of the six United States citizens in El Salvador." S. Rep. No. 83, 97th Cong., 1st Sess. 76 (1981).[2] Extensive Congressional consideration continued, particularly regarding the slowness of prosecution for the alleged murderers of four American churchwomen.[3] Thus, Congress drew on a record of thorough

[1] *See, e.g.,* H.R. Rep. No. 58, 97th Cong., 1st Sess. 70 (1981); H. Conf. Rep. No. 413, 97th Cong., 1st Sess. 84 (1981); 127 Cong. Rec. S 10295 (daily ed. Sept. 23, 1981) (Sen. Pell, during debate on certification provision) ("The death toll [in El Salvador] for this past year alone is estimated at somewhere between 10,000 to 15,000 people"); *id.* at S 10326–27 (daily ed. Sept. 23, 1981) and S 10401 (daily ed. Sept. 24, 1981) (three Senate roll-call votes regarding the provision).

[2] The provision was enacted as section 728 of the International Security and Development Cooperation Act of 1981, Pub. L. No. 97–113, 95 Stat. 1555.

[3] *See Presidential Certification on El Salvador: Hearings Before the Subcomm. on Inter-American Affairs of the House Comm. on Foreign Affairs,* 97th Cong., 2d Sess. (1982) (Vols. I & II) (ten days of Congressional hearings).

consideration of a highly important issue in enacting H.R. 4042, the 1983 renewal of the human rights certification requirement.[4]

Pursuant to U.S. Const., art. I, sec. 7, cl. 2, the President had ten days (Sundays excluded), or until November 30, 1983, to decide between two courses: to return veto the bill, that is, return the bill to the House of Representatives, the originating chamber, with his objections; or, to let the bill become law with or without his signature. Since Congress adjourned on November 18, 1983, if the President wanted to disapprove the bill, he should have returned a veto message to the Clerk of the House, who would receive it pursuant to H.R. Rule III, Cl. 5. President Reagan has followed this procedure during other adjournments, both prior and subsequent.[5]

However, President Reagan chose not to return veto the bill. Instead, on November 30, 1983, the White House issued a statement announcing a pocket veto. *See Barnes v. Kline,* App. 5a. Executive officials refused to publish H.R. 4042 as a public law of the United States. *See Barnes v. Kline,* App. 6a. The Executive pursued this course despite the settled rule that return of a bill to the Clerk of the House satisfies the Veto Clause's requirements, much as presentation of a bill to the Executive Clerk satisfies the Presentment Clause's requirements for presentation to the President.

2. The plaintiffs, Representative Michael D. Barnes and other individual Members of Congress ("Members"), filed

[4] In light of that prior record, the passage of H.R. 4042 itself was not controversial. 129 Cong. Rec. H777 (daily ed. Sept. 30, 1983) (House passage); *id.* at S16468 (daily ed. Nov. 17, 1983) (Senate passage).

[5] H.R. Rule III, Cl. 5, *reprinted in Constitution, Jefferson's Manual and Rules of the House of Representatives,* H. Doc. No. 277, 98th Cong., 2d Sess. § 647b (1985) ("House Manual"), provides that "[t]he Clerk is authorized to receive messages from the President and from the Senate at any time that the House is not in session." Previous and subsequent return vetoes during adjournments are listed in notes 40–43 *infra.*

suit against the Executive petitioners [6] in the United States District Court for the District of Columbia, challenging the pocket veto as a nullification of their votes. Both the Senate, and the Speaker and Bipartisan Leadership Group of the House of Representatives ("House parties"),[7] intervened as plaintiffs to protect the institutional interests of the Senate and House. *See Barnes v. Kline,* App. 3a n.3. On cross-motions for summary judgment, the district court (Jackson, J.) ruled for the Executive defendants on the merits. *See Barnes v. Carmen,* App. 119a–132a. The Members, the Senate, and the House parties appealed. Both in district court and in the court of appeals, the Executive declined to challenge standing. As the court of appeals (Robinson, C.J., and McGowan and Bork, JJ.) later noted, "the Executive Branch itself concede[d]" that "Congress clearly has standing to litigate the specific constitutional question presented." *Barnes v. Kline,* App. 15a, 17a (citing Tape Recording of Oral Argument at 204–11).

3a. On August 29, 1984, the court of appeals ruled in favor of respondents, in a scholarly opinion (issued April 12, 1985) by Judge McGowan. *Barnes v. Kline,* App. 1a–46a. The opinion discussed the facts and prior proceedings, App. 1a–8a, the views of the Framers, and this Court's key prior opinions on the pocket veto: *The Pocket Veto Case,* 279 U.S. 655 (1929), and *Wright v. United*

[6] By virtue of Pub. L. No. 98–497, sec. 107(d), 98 Stat. 2291 (1984), petitioner Frank G. Burke, Archivist of the United States, has inherited from one of the original Executive defendants the duty of publishing bills that have become law.

[7] The House parties are the Honorable Thomas P. O'Neill, Jr., Speaker of the House of Representatives, and the Bipartisan Leadership Group of the House of Representatives, consisting of the Honorable Jim Wright, Majority Leader; the Honorable Robert H. Michel, Minority Leader; the Honorable Thomas S. Foley, Majority Whip; and the Honorable Trent Lott, Minority Whip. The participation of the Speaker and Bipartisan Leadership Group is the normal mechanism by which the House of Representatives presents its institutional interest in litigation. See note 15 *infra*.

States, 302 U.S. 583 (1938). App. 18a–33a. The court of appeals considered carefully the Executive petitioners' argument "that the truly correct 'bright line' must be drawn at the three-day mark," meaning that "if the tenth day after presentment falls during an adjournment of over three days, a bill that has not yet been returned expires by pocket veto. . . ." App. 42a. In rejecting petitioners' proposed "three-day rule," the court of appeals discussed how this extreme proposal deviated from the practice of the preceding administrations of "Presidents Ford and Carter, both of whom assumed the effectiveness of return vetoes made during such an adjournment." App. 37a.

Judge McGowan relied on this Court's determination that the Pocket Veto Clause's two fundamental purposes are to preserve the President's opportunity "to consider the bills presented to him," and to preserve Congress's opportunity "to consider [the President's] objections to bills and on such consideration to pass them over his veto provided there are the requisite votes." App. 29a (quoting *Wright v. United States,* 302 U.S. at 596). The court of appeals held that return of H.R. 4042 to the House of Representatives would have fully satisfied both purposes. It refused to "grant[ ] the President an absolute veto [when] Congress has shown no disrespect for the President's role in the enactment process." App. 39a. "The existence of an authorized receiver of veto messages, the rules providing for carryover of unfinished business, and the duration of modern intersession adjournments, taken together, satisfy us that when Congress adjourned . . . return of [H.R. 4042] to the originating house was not prevented." App. 46a.

3b. Judge Bork dissented at length, but only on the standing issue which he raised *sua sponte.* He argued against any of what he termed " 'governmental standing,' " App. 54a, a broad view which the Executive has not defended in this Court. The dissent admitted that "[t]he Executive Branch conceded at oral argument . . . in this suit," and conceded "[s]imilarly, in

Kennedy v. Sampson," 511 F.2d 430 (D.C. Cir. 1974), that "either House of Congress would have standing to sue. . . ." App. 49a n.1 (Bork, J., dissenting). By contrast to the dissent, the panel opinion for the court of appeals found a firm basis for according standing to the Houses of Congress, quoting *Coleman v. Miller,* 307 U.S. 433, 438 (1939) ("these senators have a plain, direct and adequate interest in maintaining the effectiveness of their votes"). App. 15a.

After the Executive petitioners lost on the merits in the court of appeals, they changed position, ostensibly due to "further consideration," Exec. Br. at 4 n.3, and opposed standing in their requests for rehearing and rehearing en banc. The court of appeals found the newly-embraced position unpersuasive.[8]

SUMMARY OF ARGUMENT

On the issue of standing, the court of appeals concluded correctly that "[a]s the Executive Branch itself concedes, Congress clearly has standing to litigate the specific constitutional question presented." App. 15a–17a. In the seminal case of *Coleman v. Miller,* 307 U.S. 433 (1939), this Court expressly upheld legislative standing, finding the requisite injury in the nullification by an executive official of a lawmaking action. *Coleman* set forth the clear reasons, never questioned until now, that sustain standing to challenge such nullification. Legislative plaintiffs alleging nullification of their lawmaking process seek redress for injuries-in-fact, not for mere abstract stigma or conscientious objection. They are not mere concerned bystanders. "They have set up and claimed a right and privilege under the Constitution of the United States to have their votes given effect." *Coleman,* 307 U.S. at 438.

Separation of powers considerations strongly support recognition of standing in the unique case presented by

[8] Of the ten judges considering rehearing en banc, only three even voted to set the matter for argument. App. 135a–136a (denial of rehearing and rehearing en banc).

H.R. 4042 of an impasse between the political Branches. The final votes of the Senate and House to enact H.R. 4042, and the absolute veto which completely nullified those votes, created an impasse occasioning litigation by the Senate and House parties themselves. Accordingly, the court of appeals relied soundly on Justice Powell's analysis in *Goldwater:* "a dispute between Congress and the President *is* ready for judicial review when 'each branch has taken action asserting its constitutional authority'—when, in short, 'the political branches reach a constitutional impasse.' " App. 14a (quoting *Goldwater v. Carter,* 444 U.S. at 997 (Powell, J., concurring)).

Executive petitioners attempt to analogize this case to a dispute over execution of the law, which it is not, or to an intra-parliamentary dispute. The court of appeals pointed out the crucial difference: "[t]he court is not being asked to provide relief to legislators who failed to gain their ends in the legislative arena. Rather, the legislators' dispute is solely with the executive branch." App. 15a.

On the merits, the court of appeals correctly held that H.R. 4042 became a law when the President did not return veto it. As a very narrow exception to the system of return veto and override, the Pocket Veto Clause provides for a veto of a bill without override when "the Congress by their Adjournment prevent its Return." For its operation, that Clause demands that Congress prevent return, not simply that Congress adjourn.

As Presidents of both parties have recognized, return of a bill to an authorized officer of the Congress satisfies both the purposes found by this Court in the Clause. *See Wright v. United States,* 302 U.S. 583 (1983). When Congress makes provision for return during adjournment, the President has his opportunity to consider and approve or disapprove bills. Congress has not "cut down" that opportunity. *See Edwards v. United States,* 286 U.S. 482, 493 (1982). Then, if the President disapproves the bill, his return gives the Congress its reciprocal opportunity to

consider his objections and to decide whether to override. In contrast, barring return during adjournment would in no way aid the Clause's first purpose, for the President would still have only ten days. However, the Framers' second purpose would be defeated, as Congress would be deprived of its right to consider and override the objections.

The Executive proposes a "three-day rule": every adjournment longer than three days would allow pocket vetoes. That "three-day rule" would make the President's veto absolute for most important bills. The court of appeals soundly rejected that "three-day rule." Massive shifts from qualified to absolute veto would utterly violate the Framers' intent. The court of appeals also soundly rejected another possible distinction, of allowing pocket vetoes during intersession but not intrasession adjournments. "Congress' power to override a veto [was] intended to erect [an] enduring check[ ]," *INS v. Chadha,* 462 U.S. 919, 957 (1983). Preserving the effectiveness of that check requires that the pocket veto be no more than an exception to the general rule.

Finally, petitioners' contention that the case is moot is without merit. The Senate and House parties seek validly to have petitioner Burke publish H.R. 4042 as a public law, as appropriate relief for the injury to their lawmaking process.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY DECIDED THAT A CONSTITUTIONAL IMPASSE OVER INJURY TO THE LAWMAKING PROCESS WARRANTS JUDICIAL RESOLUTION

A. Pursuant to *Coleman v. Miller,* This Court Recognizes Legislative Injuries and Interests

In this court, the Executive petitioners now deny what they earlier conceded, and contend that the Congressional parties lack standing. Exec. Br. at 12–30. Of course, the House parties agree with the Executive that Article III requires that plaintiffs allege a basis for standing: an

injury-in-fact "fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen v. Wright,* 468 U.S. 737, 751 (1984) (citing *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.,* 454 U.S. 464, 472 (1982)). As Justice Powell has explained regarding the nature of the injury required for standing, "[n]oneconomic interests have been recognized. *E.g., Baker v. Carr,* 369 U.S. 186 (1962). . . . [But] the Court has not broken with the traditional requirement that . . . a plaintiff must allege some particularized injury that sets him apart from the man on the street." *United States v. Richardson,* 418 U.S. 166, 194 (1974) (Powell, J., concurring).

However, as this Court has held, such injury exists where Executive officials seek to nullify legislative lawmaking processes. In the seminal case of *Coleman v. Miller,* 307 U.S. 433 (1939), this Court found the requisite injury and expressly upheld legislative standing, based on clear reasoning never since questioned. In its key points, *Coleman* closely resembles this case: there, too, legislative plaintiffs brought suit to challenge the alleged nullification of the lawmaking process by an Executive officer.

Coleman involved a resolution of ratification in the Kansas Senate for the proposed federal Child Labor Amendment. "When the resolution came up for consideration, twenty senators [out of a total of forty] voted in favor of its adoption and twenty voted against it. The Lieutenant Governor, the presiding officer of the Senate, then cast his vote in favor of the resolution." 307 U.S. at 436. In response, the twenty senators who had voted against the resolution challenged the Lieutenant Governor's vote by suing to bar formal authentication of the resolution's enactment. *Id.* at 436. On appeal, this Court's "authority to issue the writ of certiorari [was] challenged upon the ground that [the legislative plaintiffs] ha[d] no standing." *Id.* at 437.

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The Court determined that the issue concerned federal law and its own Article III jurisdiction, not state law or state court jurisdiction, noting that legislative standing posed "exclusively federal questions and not state questions," *id.* at 438.[9] Chief Justice Hughes' opinion for the Court defended legislative standing in appropriate cases:

> We find the cases cited in support of the contention, that [the senators] lack an adequate interest to invoke our jurisdiction to review, to be inapplicable. Here, the plaintiffs include twenty senators, whose votes against ratification have been overridden and virtually held for naught. . . . We think that these senators have a plain, direct and adequate interest in maintaining the effectiveness of their votes.

Id. at 438 (footnote omitted). *Coleman* has been followed without reservation by this Court, *see, e.g., Bender v. Williamsport Area School District,* 54 U.S.L.W. 4307, 4309 n.7 (U.S. March 25, 1986) (citing and quoting *Coleman's* discussion of standing), and its clear, logical upholding of legislative standing has governed appropriate cases, such

[9] The opinion brushed aside the state court's construction of the law in two sentences: "[h]ad the questions been solely state questions, the matter would have ended [in state court]." *Id.* at 437–38. However, "the questions raised in the instant case arose under the Federal Constitution. . . . They arose under Article V of the Constitution. . . ." *Id.* at 438. Executive petitioners attempt to distinguish *Coleman* as a state case, Exec. Br. at 23 n.16, without even addressing this language in the opinion emphasizing the case's federal questions or responding to the other cogent points made by the court of appeals, App. 15a–17a n.15.

The one relevant distinction between Congress and state legislatures—that for Congress, unlike state legislatures, the Speech or Debate Clause limits federal court jurisdiction, Exec. Br. at 23 n.16—supports recognition of standing in this case. That limitation means there is even less potential for federal court jurisdiction over intra-parliamentary lawsuits in future cases involving Congress than there has been in cases involving state legislatures.

as *Dyer v. Blair,* 390 F. Supp. 1291 (N.D. Ill. 1975) (three-judge court) (Stevens, J.).[10]

Coleman reviewed the two relevant bodies of case law which sustained legislative standing then as they do in this case. Chief Justice Hughes first examined suits by voters in general elections, the forerunner cases of *Baker v. Carr.* He observed that nullification of legislative votes is at least as tangible and concrete an injury as nullification of votes in general elections; in fact, "[t]he interest of . . . merely qualified voters at general elections is certainly much less impressive than the interest of the twenty senators in the instant case. . . ." *Coleman,* 307 U.S. at 441. Second, the Court examined the standing to sue of such federal independent agencies as the Interstate Commerce Commission, the Federal Trade Commission, and the National Labor Relations Board—commissions that, like the Houses of Congress, are not under Executive control. *See Humphrey's Executor v. United States,* 295 U.S. 602 (1935). In answer to the contention that the legislative plaintiffs lacked "private" damages needed for standing, Chief Justice Hughes noted that the "official duties," *Coleman,* 307 U.S. at 442, of such independent agencies sustained standing, just as do the duties of state officers, even though "[i]n none of these [officers'] cases could it be said that the state officers invoking our jurisdiction were sustaining any 'private damage.' " *Id.* at 445.

This Court's rulings have confirmed both of the lines of case law relied upon by *Coleman* and its successor cases. This Court has consistently sustained both the

[10] In *Dyer,* Members of the Illinois Legislature sued to vindicate their vote for the resolution of ratification of the Equal Rights Amendment, challenging defendant officials' contention that the resolution had been defeated because ratification required a three-fifths vote. When defendants challenged the legislators' standing, the court upheld it, noting that "[w]e think plaintiffs' standing is adequately established by *Coleman v. Miller* . . . , and *Baker v. Carr.*" 390 F. Supp. at 1297 n.12.

standing to sue of voters in general elections,[11] and the standing to sue of independent agencies (so long as the case is not an intra-branch dispute subject to resolution by intra-branch methods).[12] In the years since *Coleman*, this Court has repeatedly sustained the rights of legislators and legislative bodies, in appropriate cases, to seek redress for injuries and to protect their interests. The Court has sustained intervention by the Senate and House parties to defend the constitutionality of statutes challenged by the Executive, *Bowsher v. Synar*, 54 U.S.L.W. 5064 (U.S. July 7, 1986) and *INS v. Chadha*, 462 U.S. 919, 931 n.6, 939, 940 (1983); suits by Members excluded from the Congress, *Powell v. McCormack*, 395 U.S. 486 (1969); and intervention by legislative chambers in challenges to their apportionment, *Sixty-Seventh Minnesota Senate v. Beens*, 406 U.S. 187, 194 (1972) (per curiam) ("certainly the senate is directly affected . . . [and] the senate is an appropriate legal entity for purpose of intervention"); *see also Goldwater v. Carter*, 444 U.S. 997, 1000–01 (1979) (Powell, J., concurring) (justiciability of case involving impasse between the Branches).

Other cases show why *Coleman* and the court of appeals in this case correctly found legislative plaintiffs to have the requisite injury-in-fact. The Court has found no injury-in-fact only in cases involving plaintiffs without tangible rights: those with "mere interest in a problem," *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 226 (1974) (quotation omitted); "concerned bystanders," *Valley Forge*, 454 U.S. at 473 (quoting *United States v. SCRAP*, 412 U.S. 669, 687 (1973)); persons displaying mere "conscientious objection" to events around them, *Diamond v. Charles*, 54 U.S.L.W. 4418, 4422 (U.S. April 30, 1986); complainants about "abstract stigmatic injury," *Allen v. Wright*, 468 U.S. at 755; and those who present only an asserted "right to a government" of some kind, *id.* at 756 n.21; *accord Diamond v. Charles*, 54 U.S.L.W. at 4421.

Legislative plaintiffs alleging nullification of their lawmaking process contrast starkly with such "litigants who cannot distinguish themselves from all taxpayers or all citizens." *United States v. Richardson*, 418 U.S. at 192 (Powell, J., concurring). Their injuries rise far above mere abstract stigma, conscientious objection, or bystanders' concern. Legislative plaintiffs sue to protect a right and authority to make laws—a right of which they have been concretely deprived in a specific instance, and a right conferred and defined by the Constitution, obtained and safeguarded through the most determined efforts, held by them closely, shared with no one, and valued for its concrete significance as a cornerstone of representative democracy. *Compare Baker v. Carr*, 369 U.S. at 204–08 (voters have standing regarding dilution of their vote) *with United States v. Richardson*, 418 U.S. at 174–80 (citizens and taxpayers lack such standing).

The legislative plaintiffs in this case clearly possess the minimum injury-in-fact to satisfy the threshold standing requirement. Legislative plaintiffs have standing because "[t]hey have set up and claimed a right and privilege under the Constitution of the United States to have their votes given effect." *Coleman*, 307 U.S. at 438. As Judge Tamm explained in *Kennedy v. Sampson*, a legislator challenging a pocket veto had "alleged that conduct by officials of the executive branch amounted to an illegal nullification not only of Congress' exercise of its power, but also of appellee's exercise of his power. . . . *No more essen-*

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[11] *See, e.g., Baker v. Carr*, 369 U.S. at 208 (quoting *Coleman* regarding the "plain, direct and adequate interests" of plaintiffs "in maintaining the effectiveness of their votes").

[12] *See, e.g., United States v. Nixon*, 418 U.S. 683, 692–97 (1974) (justiciability of proceeding by independent special prosecutor); *United States ex rel. Chapman v. FPC*, 345 U.S. 153, 154–56 (1953) (standing of Secretary of the Interior; independent Federal Power Commission); United States v. ICC, 337 U.S. 426, 430 (1949); *cf. Humphrey's Executor v. United States*, 295 U.S. 602 (1935) (authority of independent agencies), *cited with approval, Bowsher v. Synar*, 54 U.S.L.W. 5064, 5067 (U.S. July 7, 1986).

tial interest could be asserted by a legislator." 511 F.2d at 436 (emphasis supplied).

B. The Separation of Powers Favors Judicial Resolution of the Constitutional Impasse in This Case

The House parties recognize that the existence of injury-in-fact alone does not end the standing inquiry. This Court deems "separation of powers" considerations relevant to standing, when plaintiffs seek "systemwide" relief or a "restructuring of the apparatus established by the Executive Branch to fulfill its legal duties." *Allen v. Wright,* 468 U.S. at 760, 761. Relying heavily upon *Allen v. Wright,* the Executive petitioners assert that such separation of powers considerations negate standing in this case. *See* Exec. Br. at 6, 13, 15, 17 n.11, 20, 21, 22, 23, and 26 (citing *Allen*).

Although this case does present separation of powers considerations, they strongly support, rather than disfavor, standing. The facts of this case involve an impasse between the Houses of Congress and the Executive unresolvable otherwise than through litigation. Recognition of standing in this case enhances, rather than injures, "the ability of the representative branches of the Federal Government to respond to the citizen pressure." *United States v. Richardson,* 418 U.S. at 189 (Powell, J. concurring). Executive Branch interference in the lawmaking of the Legislative Branch brings the two Branches into an unavoidable conflict over the law. This is no internal problem of either Branch. It cannot be resolved by either official directives or collegial debate. The President departed from the normal enactment process in which he exercises his will by a return veto, and the Congress in turn decides whether to override; he made no return of H.R. 4042, and Congress had nothing upon which to operate. With no further interchange, the two Branches froze in their respective positions. What resulted was "an immutable political logjam." *United States v. Richardson,* 418 U.S. at 195 n. 17 (Powell, J., concurring). As Justice Powell explained in *Goldwater v. Carter:*

> If the President and the Congress had reached irreconcilable positions, final disposition of the question presented by this case would eliminate, rather than create, multiple constitutional interpretations. The specter of the Federal Government brought to a halt because of the mutual intransigence of the President and the Congress would require this Court to provide a resolution pursuant to our duty "to say what the law is."

444 U.S. at 1001.

The impasse present in this case contrasts sharply with the situation in *Goldwater v. Carter,* the last pertinent case with a legislative plaintiff to come to this Court.[13] In *Goldwater,* the Houses of Congress had not taken final action on the treaty termination issue of the case, and they had not appeared in the litigation. As the court of appeals noted, in *Goldwater,* " 'Congress ha[d] taken no official action . . . [and the Court] d[id] not know whether there ever will be an actual controversy between the Legislative and Executive Branches.' " App. 14a (quoting *Goldwater,* 444 U.S. at 998 (Powell, J., concurring)). In this case, by contrast, nullification of the final votes of the Senate and House to enact H.R. 4042, and the intervention of the Senate and House parties to protect their interests, presents a stark controversy between the Branches. The court of appeals pointed out that "a dispute between Congress and the President *is* ready for judicial review when 'each branch has taken action asserting its constitutional authority'—when, in short, 'the political branches reach a constitutional impasse.' " App. 14a (quoting *Goldwater,* 444 U.S. at 997 (Powell, J., concurring)).

The Executive attempts to analogize this case to an intraparliamentary dispute, contending it will lead to a "'plethora of [such] cases,'" Exec. Br. at 24 n.17 (quoting *Gregg v. Barrett,* 771 F.2d 539, 543 (D.C. Cir. 1985)). *Gregg v. Barrett* concerned an intra-parliamentary dispute be-

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[13] In *Bowsher v. Synar,* the Court deferred resolution of the issue of the standing of a plaintiff Member of Congress. 54 U.S.L.W. at 5066.

tween individual plaintiff Members and individual defendant Members. Such intra-parliamentary disputes differ greatly from inter-Branch impasses between the Houses of Congress on the one side, and the Executive on the other. *Coleman* itself upheld standing because the legislative plaintiffs complaining of Executive vote nullification were a majority controlling their Senate [14] and the Court did not have "a mere intra-parliamentary controversy" before it. 307 U.S. at 441. Similarly, this Court recently distinguished between individual "members of collegial bodies [who] do not have standing to perfect an appeal," and collegial bodies who do have such standing. *Bender v. Williamsport Area School District,* 54 U.S.L.W. at 4309.

This case involves no intra-parliamentary dispute. Both Houses voted for H.R. 4042; both Houses have presented their institutional interest in this case.[15] As Judge

[14] *Coleman* noted that "[h]ere, the plaintiffs include twenty senators. . . . [I]f they are right in their contentions their votes would have been sufficient to defeat ratification." 307 U.S. at 438. Later, the opinion again noted that "the twenty senators were not only qualified to vote on the question of ratification but their votes, if the Lieutenant Governor were excluded . . . would have been decisive in defeating the ratifying resolution." *Id.* at 441; *accord id.* at 446.

[15] The Executive's suggestion that the Senate and House parties lack the authority to present that institutional interest, Exec. Br. at 27 n.20, is without merit. The Speaker and Bipartisan Leadership Group serve as the regular mechanism for the House of Representatives to present its institutional position in constitutional litigation. In *Bowsher v. Synar,* as in cases concerning the 1984 Bankruptcy Act Amendments and the Competition in Contracting Act, the Speaker and Bipartisan Leadership Group presented the institutional interest of the House. The conference report on the Gramm-Rudman act recently noted that regular mechanism in anticipating how *Bowsher v. Synar* would proceed:

> It is intended that each body may employ what have developed to be the regular procedures to initiate participation in cases of institutional interest as they have in litigation concerning the 1984 Bankruptcy Act Amendments and the Competition in Contracting Act Amendments.

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McGowan noted: "[t]he court is not being asked to provide relief to legislators who failed to gain their ends in the legislative arena. Rather, the legislators' dispute is solely with the executive branch." App. 15a.[16]

The Executive itself has long agreed that the Houses of Congress have standing in a pocket veto case, provided the controversy has risen above an intra-parliamentary dispute. In the pocket veto case of *Kennedy v. Sampson,* the Executive contended that individual Senators lacked standing, but distinguished them from the Senate as a whole. The Executive noted in that case that "the votes of the twenty plaintiffs in *Coleman* had peculiar legal significance *as a bloc.*" *Kennedy,* 511 F.2d at 434 (reciting

Increasing the Statutory Limit on the Public Debt, H.R. Rep. No. 433, 99th Cong., 1st Sess. 100 (1985).

See, e.g., Bowsher v. Synar (statute defended by intervenors Speaker and Bipartisan Leadership Group); *Japan Whaling Association v. American Cetacean Society,* 106 S. Ct. 2860 (1986) (brief *amicus curiae* by Speaker and Bipartisan Leadership Group); *Ameron, Inc. v. U.S. Army Corps of Engineers,* 787 F.2d 875 (1986) (upholding Competition in Contracting Act defended by intervenors Speaker and Bipartisan Leadership Group), *petition for rehearing pending,* Nos. 85–5226, 85–5377 (argument scheduled for Sept. 15, 1986); *In re Benny,* 44 Bankr. 581 (N.D. Cal. 1984) (upholding Bankruptcy Act Amendments of 1984 defended by intervenors Speaker and Bipartisan Leadership Group), *app. dismissed,* Nos. 84–2805, *et al.* (9th Cir. June 9, 1986); *In re Tom Carter Enterprises, Inc.,* 44 Bankr. 605 (C.D. Cal. 1984) (upholding bankruptcy act defended by intervenors Speaker and Bipartisan Leadership Group); *In re Production Steel, Inc.,* 48 Bankr. 841 (M.D. Tenn. 1985) (same); *Lear Siegler, Inc. v. Lehman,* No. CV 85–1125–KN (C.D. Cal. opinion filed Nov. 21, 1985) (upholding Competition in Contracting Act defended by intervenors Speaker and Bipartisan Leadership Group), *petition for rehearing pending* (noticed for Sept. 8, 1986); *Pitney Bowes, Inc. v. United States,* No. 85–0832 (D.D.C. filed Mar. 13, 1985) (resolving case without reaching issue of statute defended by intervenors Speaker and Bipartisan Leadership Group).

[16] The Third Circuit made a similar distinction in another case. As Judge Adams stated, while the courts should follow "standards of restraint" in "intrabranch disputes," they should resolve cases when "legislators may show, as in *Coleman* . . . that as an aggregate they constitute a controlling bloc of the legislative branch." *Dennis v. Luis,* 741 F.2d 628, 640 (3d Cir. 1984) (concurring opinion).

the Executive's argument). "[Executive] [a]ppellants insist[ed] that only the interests of the Congress or one of its Houses as a body are protected by this [pocket veto] provision. . . ." *Id.* Accordingly, in that case the Executive conceded that "the Senate or the Congress has sustained the 'direct' injury necessary to confer standing (assuming that the [pocket] veto of S. 3418 was invalid)." *Id.*

In this case, the Executive drew the same sound line again in the courts below. When a judge on the court of appeals questioned standing, Assistant Attorney General Willard explained why the Executive Branch conceded standing. In many respects, his argument offers one of the most persuasive statements of why standing should be recognized:

> QUESTION: Why is there Article III standing here? Does the government take the position that there is Article III standing?
>
> Mr. WILLARD: The government conceded in *Kennedy v. Sampson* that the Senate as a body would have had standing in that case, and . . . the Senate is alleging injury to its corporate interests, that is its interests as a body in being able to consider legislation. . . .
>
> My point was simply that this case is different because we have the collective body that is the Senate as a plaintiff here under statutory authority.
>
> QUESTION: That doesn't make any difference—are you saying that doesn't make any difference under Article III standing?
>
> Mr. WILLARD: We believe it does make a difference, that is for Article III purposes because the character of the injury collectively or separate by the Senate is different from that suffered by an individual. . . .
>
> QUESTION: Doesn't the Senate as a body, when it intervenes, represent all citizens?
>
> Mr. WILLARD: I don't believe they claim to do so. . . . [After other questions:] I think they sue in an institutional capacity as one-half of one of the three branches of government.

> QUESTION: But does the institution have any interest to assert other than the interests of the citizens generally?
>
> Mr. WILLARD: Yes, Judge Bork, I think it does. I think its interest is preserving what is an allocation of powers under the Constitution, just as the Executive has an interest in preserving its institutional—
>
> QUESTION: You have a property right in the Senate as opposed to its representation of citizens, separating the interest of its powers from the interests of the electorate?
>
> Mr. WILLARD: That is correct. . . .[17]

The particular competence of the Judiciary regarding the question at issue in this case further supports standing. No question is presented here, as in *Allen v. Wright*, of systemwide relief, of how to enforce the law, or of other concerns arguably within the peculiar competence of the Executive Branch. To expand the principle of *Allen v. Wright* beyond that case to this wholly different one, which is the main thrust of the Executive argument, would "confus[e] the standing doctrine with the justiciability of the issues that respondents seek to raise." *Allen*, 468 U.S. at 790 (Stevens, J., dissenting).[18] While the Executive tries to import "the considerations underlying the political question doctrine," Exec. Br. at 17 n.11, this case poses no political question. The disputed pocket veto presents a legal issue which this Court alone can resolve definitively. *See Wright v. United States*, 302 U.S. 583 (1938); *The Pocket Veto Case*, 279 U.S. 655 (1929). Only recently this Court thoroughly rejected the argument that the construction of art. I, sec. 7, cl. 2, is a political question, recognizing a judicial duty " 'from the performance of which [this Court] may not shrink, to give full effect to the pro-

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[17] The quotation is from the Transcript of the Argument of June 4, 1984, in *Barnes v. Kline*, at 12–13, 16–17.

[18] The Executive "is really making a political question argument in the guise of standing analysis." *Moore v. U.S. House of Representatives*, 733 F.2d 946, 953 (D.C. Cir. 1984) (Wilkey, J.), *cert. denied*, 469 U.S. 1106 (1985).

visions of the Constitution relating to the enactment of laws," *INS v. Chadha*, 462 U.S. at 943 (quoting *Field v. Clark*, 143 U.S. 649 (1892)).

As part of its effort to inject political question overtones, the Executive raised the "alternative [of] impeachment by the House . . . and trial by the Senate," Exec. Br. at 19 n.13. That alternative could not be more ill-advised. All the untoward implications of resort to that procedure counsel against its use for a pocket veto question of the type this Court has resolved twice before. Judge McGowan soundly concluded that in an impasse such as this "[t]hat sort of political cure seems to us considerably worse than the disease, entailing, as it would, far graver consequences for our constitutional system than does a properly limited judicial power to decide what the Constitution means in a given case." App. 18a.

II. THE COURT OF APPEALS CORRECTLY DECIDED THAT THIS UNIQUE POCKET VETO CASE PRESENTS AN APPROPRIATE CONTEXT FOR RECOGNIZING STANDING

The Executive makes a familiar "opening of the floodgates" argument, that if the Court did not rule out standing for the Senate and House parties in this case, it would soon find itself inundated with similar litigation. Executive petitioners direly forecast that the courts "would routinely be called upon to resolve disputes between the political branches," and would "assume a role of continual and pervasive intrusiveness into the relationships of the branches." Exec. Br. at 24, 17 (quotation omitted). The reports of this Court since *Coleman* hardly suggest that upholding legislative standing opens such floodgates; the opposite is more nearly true. This Court should always presume that "[t]he courts will exercise appropriate restraints just as they have exercised them in the past," and that its narrow holdings do not mean a "Pandora's box will be opened." *Sierra Club v. Morton*, 405 U.S. 727, 758 (1972) (Blackmun, J., dissenting).

Nevertheless, the House parties share with the Court an appreciation that excessive judicial intervention would

not serve the interests of democracy, particularly since House leaders have themselves been the targets of lawsuits by individual members on internal Congressional matters. The Court properly takes pains to maintain its "principled basis for confining" standing, *Valley Forge*, 454 U.S. at 489, rather than "open the door to a general assault," *id.* at 515 (Stevens, J., dissenting) (quotation omitted). Fortunately, as Judge McGowan's ruling reflected, this case lends itself readily to narrow principles that allay such concerns.

First, the injury from a pocket veto acts in a complete and conclusive fashion on the heart of Congress' role. The cautious and conservative standing analysis developed by Judges Tamm [19] and Wilkey concerning standing in pocket veto cases [20] emphasized the distinction between the conclusiveness of nullification in a pocket veto case, which supports standing, and more general allegations, such as in *Goldwater v. Carter*. The legislative plaintiffs in *Goldwater* alleged mere denial of a potential opportunity to vote (regarding treaty termination) but not nullification of actual current lawmaking.[21] Unlike the situa-

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[19] *See Allen v. Wright*, 468 U.S. at 749 n.18 (noting with approval that "Judge Tamm [had] dissented from the holding of the Court of Appeals" and concluded that plaintiffs lacked standing). Judge Tamm was the author of *Kennedy v. Sampson*.

[20] *Harrington v. Bush*, 553 F.2d 190, 211 (D.C. Cir. 1977) (Wilkey, J.) ("[i]n *Kennedy* the injury . . . was the effective disenfranchisement of the legislator . . . [for] the Senator's vote was rendered a direct and immediate nullity, as if he had not cast the vote at all. . . . [N]ullification of a specific vote [was] the requisite injury in fact"); *accord, Moore v. United States House of Representatives*, 733 F.2d at 952 (Wilkey, J.) ("the nullification of a legislator's vote by illegal Executive action, may give rise to standing if the injuries are specific and discernible").

[21] Judge Tamm joined in an opinion distinguishing *Goldwater* from *Kennedy v. Sampson* on standing grounds. "Under the paradigm of injury emerging from *Kennedy*, if the legislature manifests its will through final legislative action, and if the Executive nullifies the effect of that legislative action, a legislator whose vote contributed to the legislative action will have standing. . . . We have required the

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tion in *Goldwater,* a pocket veto nullifies an enactment process that has already completed every step of consideration, amending and final passage.[22]

The Executive injury in this case strikes at the very center and heart of Congress' role, not at some non-lawmaking function.[23] As Hamilton said, "What is a LEGISLATIVE power but a power of making LAWS?" *The Federalist* No. 33, at 202 (Rossiter ed. 1966). This Court has repeatedly stressed the centrality of lawmaking as a Congressional function. "[T]he Constitution is neither silent nor equivocal about who shall make laws. . . . [T]he first section of the first article says that 'All legislative Powers herein granted shall be vested in a Congress of the United States'. . . ." *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 587–88 (1952). Justice Powell recently stated: " 'It is the peculiar province of the legislature

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plaintiff legislator to show that the challenged Executive action has *nullified* a vote already taken. . . ." *Goldwater v. Carter,* 617 F.2d 697, 711–12 (1979) (Wright, C.J., and Tamm, J., concurring) (citations and footnote omitted), *vacated on other grounds,* 444 U.S. 997 (1979).

Subsequently, a different threshold barrier evolved, known as "remedial" or "equitable" discretion, based on a perception "[i]n the aftermath of *Goldwater* . . . [that] [t]he Supreme Court does not appear inclined to employ standing at all" for legislative plaintiffs. McGowan, *Congressmen in Court: The New Plaintiffs,* 15 Ga. L. Rev. 241, 250 (1981). However, before the emergence of that doctrine, the narrow analysis of standing by Judges Tamm and Wilkey had previously shown how legislative standing could be fenced into a tight area with the pocket veto case at its center.

[22] In that respect, this case is clearer even than *Coleman.* In *Coleman,* it could have been argued that the disputed resolution was only a step in the larger process of amendment ratification, rather than a full-fledged enactment such as H.R. 4042.

[23] *Cf. Hutchinson v. Proxmire,* 443 U.S. 111 (1979) (non-lawmaking function of informing the public); *United States v. Brewster,* 408 U.S. 501 (1972) (non-lawmaking function of aiding constituents). In fact, even the legislative function as performed individually or in committee, although protected against suits by the Speech or Debate privilege, *see, e.g., Gravel v. United States,* 408 U.S. 606 (1972), is not the same for standing purposes as the power to enact laws possessed institutionally by the Houses of Congress.

to prescribe general rules for the government of society,' " *INS v. Chadha,* 42 U.S. at 967 (Powell, J., concurring) (quoting *Fletcher v. Peck,* 10 U.S. (6 Cranch) 87, 136 (1810)).[24]

Executive petitioners criticize the court below for "erroneously attribut[ing] to Congress a legally cognizable interest . . . in overseeing the manner in which the Executive Branch interprets and executes the laws." Exec. Br. at 20. Nothing could be further from what the court of appeals actually held. Executive nullification of the lawmaking process, implemented by refusal to publish H.R. 4042 as a law, differs sharply from disputes over agency execution of the laws. Executive nullification occurs only in the special context of the constitutional enactment process of the Congress and the President in their unique lawmaking interaction; oversight disputes concern the adequacy of execution of law and occur throughout the multifarious contexts of the various departments, Congressional committees, and government activities. A case concerning Executive nullification of lawmaking reaches only the fundamental and antecedent question of whether law has been made, not the multitude of subsequent questions that may arise about the implementation of the law after it is made.

Suits by legislative bodies regarding lawmaking do not in themselves constitute execution of the law,[25] and this

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[24] " '[T]he rule is that in the actual administration of the government Congress or the Legislature should exercise the legislative power. . . .' " *Buckley v. Valeo,* 424 U.S. 1, 121 (1976) (quoting *Hampton & Co. v. United States,* 276 U.S. 394 (1928)), and " ' [l]egislative power, as distinguished from executive power, is the authority to make laws,' " *id.* at 139 (quoting *Springer v. Philippine Islands,* 277 U.S. 189, 202 (1928)).

[25] In its most extreme form, the Executive appears to argue that no suit by a legislative entity could ever be valid, because the very act of suing would violate an asserted Executive monopoly on access to the courts pursuant to the "faithful execution" clause. Exec. Br. at 19. This argument is without merit, for legislative bodies and agencies may validly conduct lawsuits concerning legislative authority to make

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lawsuit's every material aspect—its plaintiffs, defendants, and relief sought—differs sharply from a suit concerning

law. For example, suits and applications to the courts in aid of investigations by legislative commissions and committees occur often, for they serve legislative authority to make law. *See, e.g., Oklahoma Press Pub. Co. v. Walling,* 327 U.S. 186, 201 (1946); *Interstate Commerce Comm'n v. Brimson,* 154 U.S. 447 (1894); *Senate Permanent Subcommittee on Investigations v. Cammisano,* 655 F. 2d 1232 (D.C. Cir.), *cert. denied,* 454 U.S. 1084 (1981); *Application of United States Senate Select Committee on Presidential Campaign Activities,* 361 F. Supp. 1270 (D.D.C. 1973).

Consideration of the "faithful execution" clause shows its purpose was entirely different than the one hypothesized by the Executive, of creating a monopoly on access to the courts. The clause took its inspiration from the English Bill of Rights, enacted after the Stuart Monarch James II was forced into exile by the Glorious Revolution of 1688. A major provision of the English Bill of Rights declared "that the pretended power of suspending of laws, or the execution of laws by regall authority, without consent of Parlyament, is illegal." 1 W. & M., sess. 2, ch. 2 (1688).

> "Scholars have concluded that the 'faithful execution' clause of our Constitution is a mirror of the English Bill of Rights' abolition of the suspending power [,] that is, the abolition of what the English Bill of Rights had called 'the pretended (Royal) power of Suspending' " [the execution of laws.]

Ameron, Inc. v. U.S. Army Corps of Engineers, 610 F. Supp. 750, 755 (D.N.J. 1985) (quotation omitted), *aff'd* 787 F.2d 875 (3d. Cir. 1986), *petition for rehearing pending,* Nos. 85-5226, 85-5377 (argument scheduled for Sept. 15, 1986). *See Kendall v. United States ex rel. Stokes,* 37 U.S. (12 Pet.) 524, 613 (1838); *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 610 (Frankfurter, J., concurring); *The President's Suspension of the Competition in Contracting Act is Unconstitutional:* H.R. Rep. No. 138, 99th Cong., 1st Sess. 10 (1985); *Constitutionality of GAO's Bid Protest Function: Hearings Before a Subcomm. of the House Comm. on Government Operations,* 99th Cong., 1st Sess. 263-67 (1985); *Department of Justice Authorization and Oversight, 1981: Hearings Before the Senate Comm. on the Judiciary,* 96th Cong., 2d Sess. 885-87 (1980); Reinstein, *An Early View of Executive Powers and Privileges: Trial of Smith and Ogden,* 2 Hastings Const. L.Q. 309, 321 (1975); Stewart, *The Trial of the Seven Bishops,* Cal. St. B.J., Feb. 1980, at 70 (account of the 1688 case underlying the provision).

execution of the law.[26] The Senate and House parties, as plaintiff-intervenors, are protecting their institutional interests, not appearing as subjects of the human rights certification process of H.R. 4042. The Executive defendants are not the State Department officials with duties relating to El Salvador who would execute H.R. 4042, but the Executive Clerk and Archivist who process a bill and promulgate it into law.[27] The relief sought by the Senate and House parties was not an order to issue human rights certifications for El Salvador, but an order declaring that H.R. 4042 is a law and that it shall be promulgated.

In sum, this case presents neither a disagreement over execution of the law nor an intra-parliamentary dispute. It concerns a conflict between the Senate and House parties, and the Executive, over Executive nullification of the making of H.R. 4042 into law—a conflict which has

[26] *Coleman* and *Goldwater* illustrate this distinction. The legislators suing in *Coleman* sought relief against the authentication of the resolution of enactment, not relief against the execution of the Child Labor Amendment. The *Goldwater* plaintiffs sought relief against the denial of a legislative opportunity, not an absolute guarantee of future defense of Taiwan. This Court viewed those cases on their own terms, addressing the pertinent threshold problems for a suit concerning legislative action or denial of an opportunity for legislative action, rather than the very different problems of a suit concerning execution of a constitutional amendment or treaty.

As noted above, Judges Tamm and Wilkey explained in detail the soundness of recognizing standing in a pocket veto case. They distinguished such a case sharply from general complaints about execution of the laws. *Harrington v. Bush,* 553 F.2d at 211; *Moore v. United States House of Representatives,* 733 F. 2d at 952.

[27] Executive petitioners argue that respondents cannot "sue the Archivist or the Executive Clerk—inferior officers who are subordinate to the President—in order to collaterally attack such a decision by the President." Exec. Br. at 30 n.23. Quite the contrary, to challenge such decisions, not only can the President's subordinates be named as the defendants, but in fact they are the preferred parties to name as defendants. *Nixon v. Fitzgerald,* 457 U.S. 731, 754 n.36 (1982); *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579 (1952).

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resulted in impasse. This conflict and impasse present a case or controversy to this Court.

III. THE COURT OF APPEALS CORRECTLY APPLIED THE SETTLED RULE AGAINST POCKET VETOES OF H.R. 4042

The court of appeals correctly held that H.R. 4042 became a law when the President did not return veto it. Article I, sec. 7, cl. 2 grants the President one of his greatest powers, namely, the power to review every bill enacted by the 435 Representatives and 100 Senators representing the entire nation, and to veto any bills of which he disapproves. Considering the enormous range and importance of American legislation today, few powers ever vested in any individual in peacetime compare in significance with the veto power. The Constitution subjects that awesome power to only one limit; the right of the people to override a veto by a two-thirds vote of their representatives in each House. A President can erect a high barrier to legislation so long, but only so long, as his position has the modicum of persuasiveness necessary to retain the support of one-third plus one of the Members of either House.

Having carefully established so nice a balance, the Framers created the pocket veto not to upset that balance, and not to give the President an even greater and indeed absolute voice in lawmaking, but only for the narrowest of purposes. They provided the pocket veto to assure that the President would not be deprived of his ten days for considering bills, by allowing a bill to be absolutely vetoed when "the Congress by their Adjournment prevent [the bill's] Return." U.S. Const., art. I, sec. 7, cl. 2. Congress did not prevent the return of H.R. 4042, but instead made ample provision for the President to return veto the bill. Giving the President an absolute veto in such circumstances would violate the Framers' intent and upset the balance between the political branches.

A. The Rule Against Pocket Vetoes During the Congress Accords With the Pocket Veto Clause's Plain Wording and Intent

A clear procedure, well settled between Congress and the President until the actions in this case, specifies the process for return vetoes during adjournments and requires that the President make such return vetoes, rather than pocket vetoes, during adjournments other than the final adjournment of the Congress. The Framers set forth the procedure for the President to disapprove a bill presented to him: "[i]f he approve [the bill] he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated," art. I, sec. 7, cl. 2. In this same clause, the Framers conferred upon Congress the authority to override, by

> proceed[ing] to reconsider [the bill]. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law.

Id. As a very narrow exception to the procedure of return veto and override, the Constitution provides for a pocket veto without override when Congress denies the President his ten days for consideration:

> If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Id. The established rule, the history of which is discussed below, requires a return rather than a pocket veto during an adjournment when Congress provides for a return by authorizing receipt by the House Clerk or Senate Secretary.

That rule accords with the Clause's plain language. A President can pocket veto a bill only when "the Congress by their Adjournment *prevent* its Return." *Id.* (emphasis supplied). The Clause's verb states its active principle:

whether the Congress "prevent" return. The Clause's focal consideration, the cause of a pocket veto, is prevention of return, not adjournment; as the court of appeals observed, "[o]nly those adjournments that actually prevent return create the opportunity for a pocket veto." App. 44a. "[B]y their Adjournment" is a parenthetical phrase which merely explains when the Congress may prevent return. The Pocket Veto Clause should be interpreted so as to give meaning to all of its language. It should not be interpreted to ignore the active principle of the Clause, expressed in its focal verb regarding whether Congress "prevent" return, thereby giving sole significance to a parenthetical explanatory phrase.

Had the Framers wished to prescribe adjournment as the test, rather than prevention of return, the Clause would read simply that a bill not signed by the President shall be a law "unless the Congress has Adjourned." With this language, shorter and simpler by half than the actual words ("unless the Congress by their Adjournment prevent its Return"), the Framers would have empowered the President to pocket veto during every adjournment of the Congress, exactly as Executive petitioners wish. However, the Framers did not word the Clause thusly. They drafted fuller and very different language expressly focusing on prevention of return, to distinguish between Congresses which "prevent" return and Congresses which do not. The express language of the Clause thereby allowed for the settled rule that when the Congress does not prevent return, but instead provides for return, the President shall return veto rather than pocket veto.

The intent of the Clause, discussed by this Court in two cases, further confirms the soundness of the settled rule. In both *Edwards v. United States*, 286 U.S. 482 (1932), and *Wright v. United States*, the Court held that adjournments lack significance unless they interfere with the purposes of art. I, sec. 7, cl. 2. In *Edwards*, the Court held that adjournment did not prevent the President from considering and signing bills. "[M]erely because the Congress has adjourned" does not "cut down" the "opportunity of the President to examine and approve bills," 286 U.S. at 493. Similarly, in *Wright*, the Court held that the President could not pocket veto a bill during a three-day recess of the Senate. Instead, Congress's provision for return of a veto message to the Secretary of the Senate provided a fully adequate means of return.[28]

These holdings relied on the twin purposes of the veto provisions. In *Edwards*, the Court noted that the Framers intended "[t]o safeguard the opportunity of the President to consider all bills presented to him"; they also intended "to safeguard the opportunity of the Congress for reconsideration of bills which the President disapproves." *Id.* at 486. In *Wright v. United States*, that Court again specified the "two fundamental purposes" of the Clause, stating that "[w]e should not adopt a construction which would frustrate either of these purposes." 302 U.S. at 596. The Framers intended "that the President shall have suitable opportunity to consider the bills presented to him;" also, "that the Congress shall have suitable opportunity to consider his objections to bills and on such consideration to pass them over his veto provided there are the requisite votes." *Id.*

Like the practices upheld in *Edwards* and *Wright*, returning the President's veto to the designated officers of each House serves both the Clause's purposes, while barring such return would undermine totally the Framers' intent to allow Congress to override. When Congress makes provision for return during adjournment, the President has his opportunity to examine, consider, and approve or disapprove bills. Congress has not "cut down" that opportunity. *Edwards*, 286 U.S. at 493. Then if the

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[28] In contrast, in the 1929 *Pocket Veto Case*, the Court upheld a pocket veto which occurred during a period when Congress had prevented a bill's return: an adjournment of five and a half months between regular and lame duck sessions of a Congress, during which the chambers did not attempt to authorize the House Clerk or Senate Secretary to receive return veto messages.

President disapproves the bill, his return to the authorized officer gives the Congress its reciprocal opportunity to consider the President's objections and to decide on overriding. In contrast, barring return during adjournment would in no way aid the Clause's first purpose of protecting the President's ten days. It would not give the President any greater opportunity to examine and consider bills; he would still have only ten days to decide whether to sign. What would change is that the President's veto would become an absolute pocket veto, utterly defeating the Clause's second purpose by completely preventing Congress from considering and overriding objections by two-thirds of each House.

House Rule III, Cl. 5 authorized the Clerk of the House to receive messages during the adjournment in question in this case, and the President could have returned H.R. 4042 with his objections to the Clerk.[29] Such provision for return was entirely adequate. At one time, this Court doubted, on a hypothetical basis, the sufficiency of such a provision for return. The opinion in the 1929 *Pocket Veto Case* commented that "delivery of the [return voted] bill to some individual" might be "fictitious," 279 U.S. at 685. That statement was purely hypothetical and clearly dictum.[30]

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[29] This is the same mechanism by which the House receives messages from the Senate during adjournment. The House adopted the rule pursuant to art. I, sec. 5, cl. 2, which provides that "[e]ach House may determine the Rules of its Proceedings." *INS v. Chadha* confirmed that pursuant to that Clause, each House may govern "internal matters," 462 U.S. at 956 n. 21. Provision for receipt of messages is obviously such a matter. Thomas Jefferson, in compiling his manual of legislative procedure when he was Vice President (and thus the Senate's presiding officer), devoted an entire chapter to the handling of messages, all based on internal procedures of Parliament. *See House Manual, supra* note 5, §§ 560-71.

[30] Not only does *The Pocket Veto Case* itself indicate the statement was dictum, by pointing out that the Congress had not authorized an officer so that such a situation was not before the Court, but in *Wright v. United States*, 302 U.S. at 593-94, the Court again indicated the

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Only in *Wright v. United States* was the matter presented concretely, and there the Court upheld return to an authorized officer as adequate. The Court overruled its prior contrary 1929 indications,[31] agreeing with counsel for the House of Representatives that " '[t]he Houses of Congress have officers and agents of great power and responsibility who act in their stead, and who are constantly in their places when the Houses . . are not in session.' " 301 U.S. at 591 (quoting the argument that had been presented in *The Pocket Veto Case* by Representative Hatton W. Sumners, on behalf of *amicus curiae* Committee on the Judiciary of the House of Representatives). There was " 'nothing in the Constitution which denies the right to the use of these agents in effecting the return of objected-to bills.' " *Id.* at 591.

Although the Executive wisely abandons in this Court some of its challenges below to the adequacy of return to an officer, it continues to press others. In the courts below, the Executive had argued that the Clerk of the House might "be absent, sick or dead, or may refuse to accept the message," or that "[d]elivering a veto message to a Congressional agent is not the same act of public notoriety that the Framers contemplated" for vetoes.[32] The

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statement was dictum. Regarding that language in *The Pocket Veto Case*, then-Assistant Attorney General for Legal Counsel William H. Rehnquist testified: "I think most people would concedo that was what you might call dicta that was not necessary to the decision in the case. . . ." *Constitutionality of the President's "Pocket Veto" Power: Hearing Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, 92d Cong., 1st Sess. 18 (1971).

[31] Regarding its previous statemen's in the *The Pocket Veto Case*, the Court noted "[t]he oft-repeated admonition of Chief Justice Marshall 'that general expressions, in every opinion . . . [if they go] beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision.' " 302 U.S. at 593-94 (quoting *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399 (1821)).

[32] Points and Authorities in Support of Defendants' Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Preliminary and Permanent Injunction at 39 n.27.

Executive does not appear to be pressing those arguments in this Court, and in fact *Wright v. United States* laid them to rest.[33] Just as bills are presented to the President and returned by him through his Executive Clerk, even when the President is absent,[34] and written submissions are made to this Court through its Clerk even during the summer recess, so messages are received for the House by its Clerk during an adjournment. The court of appeals correctly noted that return to the House Clerk occasions no uncertainty: "the time of delivery is recorded on the journal of the respective house, and the message is retained by the authorized officer for presentation on the floor of the house immediately upon the house's reconvening. The return may thus 'be accomplished as a matter of public record accessible to every citizen.'" App. 35a–36a (footnotes omitted) (citing *Kennedy v. Sampson*, 511 F.2d at 441).

In this Court, the Executive makes only one criticism of return to authorized officers, apart from its formalistic arguments for the "three-day rule" discussed below. The Executive contends that when the President vetoes a bill, he creates "a matter of profound urgency," and that a return veto during an adjournment does not provide an opportunity for "immediate resolution of the disagreement." Exec. Br. at 38, 39. This criticism deems "immediate resolution" so essential that an absolute veto for the President is preferable to any delay.

Neither the Clause's wording nor its traditional operation supports such an argument. When the Framers

[33] The Court agreed with the reasoning of counsel for the House of Representatives that allowing what was termed "constructive delivery" made sense. The alternative was to "require in every instance the persons who constitute the Houses of Congress to be in formal session in order to receive bills from the President," which "would also require the person who is President personally to return such bills. . . ." 302 U.S. at 591–92 (quotation omitted).

[34] *Eber Bros. Wine & Liquor Corp. v. United States*, 337 F.2d 624 (Ct. Cl. 1964) (bill may be presented while the President is overseas), *cert. denied*, 380 U.S. 950 (1965).

wanted to write a time limit into the Clause, they knew how to. They specified for the President "ten Days (Sundays excepted)" to sign or to veto. No such time limit for Congressional override was written into the Clause, and the Executive brief conspicuously lacks even one quote from the Framers supporting the theory of a constitutional imperative to swift resolution. Quite the contrary, the Framers drafted the Clause to resolve override efforts deliberately rather than hastily.[35]

It has long been established that there is no need for immediate resolution. As the court of appeals noted, "neither the Constitution nor the rules of either house place any time limit on reconsideration of returned bills." App. 34a n.27. A veto override can wait longer than the length of an adjournment: a veto received during one session can await the end of the session in which the veto occurred, plus the length of the next adjournment, plus a period of indefinitely long length in the next session, before resolution of an override effort. For a recent example of such deferred consideration, on December 17, 1985, the President return vetoed a bill regarding textile imports, and the House did not undertake its vote on override of the

[35] If the Framers felt the "urgency" attributed to them by Executive petitioners, they would have drafted the override provision with one obvious difference: letting both Houses consider the veto at the same time. For both Houses to consider the veto would speed up consideration, and would bring the override question to a much quicker conclusion on the frequent occasions that the non-originating House is willing to sustain the veto in short order.

Instead, the Framers established a very deliberate process that proceeds linearly from one step to the next, without shortcuts. First, the vetoed bill must return "with [the President's] Objections to that House in which it shall have originated." Art. I, sec. 7, cl. 2. There it starts its first reconsideration. Then, "[i]f after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House." *Id.* There it starts its second reconsideration. This procedure excludes simultaneous reconsideration by the two Houses or early action by the non-originating House. It signifies that if anything, the Framers put a premium, not on "urgency," but on avoiding hasty action.

veto until August 6, 1986.[36] That eight-month delay, which occasioned no constitutional or procedural question whatsoever, was over seventy times as long as the three-day limit that the Executive petitioners want as an absolute ceiling.[37]

This Court does not construe the Pocket Veto Clause as requiring "hurried and inconsiderate examination of bills," *Edwards v. United States*, 286 U.S. at 493. In this case, the court of appeals held that "the delay is not substantial," being "considerably shorter than the half-year long adjournments common at the time of the *Pocket Veto Case*" in 1929. App. 33a.[38] So long as the Congress allows the President his full ten days and does not prevent return or "cut down" his time, the Framers consigned the pace of the Congress's own resolution of a veto issue to the Congress, rather than to the President.

In seeking to extract an absolute veto as the "consequence" for Congress's taking of adjournments, the Executive takes a critical view of adjournment as "premature" action, Exec. Br. at 34, suggesting that adjournment be seen as regrettable if not positively reprehensible. The Executive view is entirely contrary to public understanding of democracy today. It is true that before the era of rapid communications and transportation, the heads of all three Branches—President, Supreme Court and Congress—carried out their appointed roles largely at the seat of the government, and much of the country had to

[36] 131 Cong. Rec. H12830 (daily ed. Dec. 17, 1985) (veto message); 132 Cong. Rec. H5541-42 (daily ed. Aug. 6, 1986) (vote).

[37] As the Executive admits, the chambers of Congress may deal with veto messages under their procedural rules which allow for full consideration of a veto, including referral to committee and postponement to any later time, Exec. Br. at 38 n.27, as well as debate and, in the Senate, filibuster. *Senate Procedure*: S. Doc, No. 2, 97th Cong., 1st Sess. 628 (1981) (section entitled "Veto, Debate of").

[38] This Court has only said previously that return should be "timely," *The Pocket Veto Case*, 279 U.S. at 685, as opposed to the situation in that case, when Congress adjourned for five and a half months.

accept not seeing any of these ruling officials most of the year. However, as the court of appeals noted, "improved transportation and a more burdensome workload have drastically altered the character of the congressional schedule . . . produc[ing] congressional calendars marked by numerous short recesses rather than a single lengthy one." App. 41a n.36 (quotation omitted).

Today, while the President and the Supreme Court still remain in the capital, Congress performs the vital function of keeping the national government in direct touch with the people. Congress adjourns so that its Members may journey back and forth across the continent to their states and districts, explaining national policy, discussing the issues, learning the problems, goals and limits of the country, and confirming to the people that this is a government of them and by them rather than over them. Congress must perform that function year-round, not on the nineteenth-century schedule of one long adjournment and a continuous session. This is no plea to change the Constitution. The Framers in their wisdom drafted the Pocket Veto Clause only to avoid the prevention of return, not to allow absolute vetoes at every adjournment. Congress' procedures have respected the Framers' intent and the President's ten days, and those procedures accord with the Constitution.

B. The Courts and Prior Administrations Settled the Rule

The lower courts, the Congress, and the Executive had settled until this case that during adjournments the President must make return vetoes, and the history of that resolution attests to the soundness of the rule. Consideration of the issue in its modern context began when President Nixon first took the position that he could pocket veto during brief adjournments. Until then, there had been no occasion for a meaningful test of the Executive theories now proposed in the "three-day rule" discussed below. Historically, "[t]here was only one case of a pocket veto during an adjournment of less than ten days—when Lyndon Johnson pocket vetoed a private

relief bill during a nine-day adjournment in 1964," A. Schlesinger, *The Imperial Presidency* 237 (1974), partly because until the late 1930s the nature of sessions and adjournments, and the law regarding returns to an authorized officer, had been in flux.[39]

Accordingly, the first modern occasion for resolving the question occurred when President Nixon pocket vetoed a bill during a five-day Christmas recess in 1970. Senator Kennedy filed a lawsuit to challenge the pocket veto. The United States Court of Appeals for the District of Columbia Circuit concluded, in *Kennedy v. Sampson*, that by authorizing an officer to receive a veto during the adjournment, Congress had made adequate provision for a return and had not prevented return. Accordingly, the court held the pocket veto invalid.

This sound judicial ruling paved the way for resolution of the issue between the Branches. The Executive defendants in *Kennedy v. Sampson* considered petitioning this Court for certiorari, but decided against doing so. Instead, on April 13, 1976, Attorney General Levi announced the

[39] Experience before 1940 does not present a meaningful basis for comparison. As the court of appeals noted, past "practice [is not] particularly relevant here, given that it developed under adjournment conditions markedly different from those prevailing today." App 42a. The older history of pocket vetoes during adjournments cited in part by the Executive, Exec. Br. at 45–46, predated Congress's complete rearrangement of its adjournments after the Twentieth Amendment (the "Lame Duck" Amendment, discussed below) which first applied to the Seventy-Fourth Congress convening in 1935. That older history predated as well this Court's sanctioning of the use of authorized officers to receive return vetoes in *Wright v. United States* in 1938.

The more recent history provided mixed signals. In 1940, President Roosevelt made eight return vetoes—not pocket vetoes—during a ten-day adjournment. United States Senate Library, *Presidential Vetoes, 1789–1976* 310–13 (1978); Exec. Br. at 48 n.35. This suggested recognition after *Wright* of the appropriateness of returns during adjournments. After that, there was only one period shorter than that 1940 experience in which any kind of veto occurred, President Johnson's single 1964 pocket veto of a private bill noted in text, until the new policy of President Nixon was adjudicated in *Kennedy v. Sampson*.

President's decision that he would accept the adequacy of return during adjournment:

> President Ford has determined that he will use the return veto rather than the pocket veto during intrasession and intersession recesses and adjournments of the Congress, provided that the House of Congress to which the bill and the President's objections must be returned according to the Constitution has specifically authorized an officer or other agent to receive return vetoes during such periods.

122 Cong. Rec. 11202 (1976) (reprinting statement by Attorney General). The Executive agreed to entry of summary judgment invalidating various pocket vetoes that had occurred during intrasession and intersession adjournments. *Kennedy v. Jones*, 412 F. Supp., 353, 356 (D.D.C. 1976).

Thereafter, Presidents followed that settled rule on a bipartisan basis. As the court of appeals noted, "Presidents Ford and Carter [both] assumed the effectiveness of return vetoes made during such an [intersession] adjournment." App. 37a. President Ford made two return vetoes during intersession adjournments, *id.* 37a n.32. President Carter made a return veto during an intersession adjournment, *id.*

"President Reagan himself has frequently delivered veto messages during an adjournment of Congress." *Id.* 36a n.31. Even before this case, he returned six vetoed bills to the Clerk of the House, and two to the Secretary of the Senate, during adjournments of the Congress.[40] For example, in 1982, the President disapproved a supple-

[40] 128 Cong. Rec. H3130 (daily ed., June 2, 1982) (H.R. 5118); 128 Cong. Rec. H3984 (daily ed., July 12, 1982) (H.R. 6198); 128 Cong. Rec. H6743 (daily ed., September 8, 1982) (H.R. 6863); 128 Cong. Rec. H8515 (daily ed., November 29, 1982) (H.R. 1371); 128 Cong. Rec. S13439, 13445 (daily ed., November 29, 1982) (S. 2577); 129 Cong. Rec. H6691 (daily ed., September 12, 1983) (H.R. 3564); 129 Cong. Rec. H6690 (daily ed., September 12, 1983) (H.J. Res. 338); 129 Cong. Rec. S11945 (daily ed., September 12, 1983) (S.J. Res. 149).

mental appropriations bill during an adjournment, by returning the bill with a veto message to the Clerk of the House. First the House, then the Senate, voted to override his return veto and the bill became Pub. L. No. 97-257, 96 Stat. 818 (1982).[41] The same sequence of disapproval by President Reagan during an adjournment, return of the vetoed bill to the Clerk of the House, and override of the veto occurred for a 1982 bill concerning copyrights, which became Pub. L. No. 97-215, 96 Stat. 178 (1982).[42] H.R. 4042's pocket veto marked no inadequacy in the procedure for returns during adjournments. On the contrary, since H.R. 4042, President Reagan has returned three more vetoed bills to officers of the Congress during adjournments, including two return vetoes during the latest intersession adjournment.[43]

[41] H.R. 6863, the Supplemental Appropriations Act, 1982, was presented to the President on August 23, 1982. Under H. Con. Res. 399, 97th Cong., 2d Sess., the Congress adjourned on August 20. On August 28, while the Congress was adjourned, President Reagan returned the bill with his objections to the Clerk of the House. On September 8, the Congress reconvened. On September 9 and 10, the House and Senate, respectively, passed the bill over the President's veto. *See* Congressional Research Service, *Digest of Public General Bills and Resolutions*, 97th Congress, 2d Session, Part I, at 121 (1983).

[42] H.R. 6198, a bill to extend the copyright law manufacturing clause for four years, was presented to the President on July 1, 1982. Under H. Con. Res. 367, 97th Cong., 2d Sess., the Congress adjourned on July 1. On July 8, while the Congress was adjourned, the President vetoed the bill by returning the bill, with his objections, to the Clerk of the House. On July 12, the Congress reconvened. On July 13, the House and Senate both passed the bill over the President's veto. Congressional Research Service, *supra* note 41, at 93.

[43] On August 29, 1984, while the Congress was adjourned, the President vetoed S. 2436, a bill to fund public broadcasting, by returning the bill with his objections to the Secretary of the Senate. 130 Cong. Rec. S10720 (daily ed., September 5, 1984). On January 14, 1986, during the intersession adjournment of the Ninety-ninth Congress, the President vetoed H.R. 1404, a bill to establish a wildlife refuge and training center, by returning the bill with his objections to the Clerk of the House. 132 Cong. Rec. H2 (daily ed., Jan. 21, 1986). On January 17, during that same intersession adjournment, the President vetoed

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Thus, the rule requiring return vetoes, rather than pocket vetoes, during adjournments truly has been settled. It accords with the plain wording of the Constitution, the Framers' intent, the past holdings of the courts, and the bipartisan practices of the Presidents.

IV. NO ALTERNATIVE RULE MAKES SENSE

Two alternatives to the settled rule have been suggested. The Executive proposes a "three-day rule'": every adjournment longer than three days would allow pocket vetoes. Another alternative, which no party urges, would allow pocket vetoes during all intersession (but not intrasesssion) adjournments. Neither alternative makes sense and the court of appeals correctly rejected both.

A. Respondents' Proposed "Three-Day Rule" Would Make the President's Veto Absolute, Utterly Contrary to the Framers' Democratic Intent

Petitioners propose that during every adjournment of the Congress longer than three days in duration, the President should pocket veto rather than return veto. Executive petitioners term this the "well-defined rule that the Pocket Veto Clause applies when 'the Congress' has adjourned," Petition for Certiorari at 27-28. Petitioners would tie the pocket veto clause to "the Three-Day Adjournment Clause," Exec. Br. at 45, pursuant to which both Houses consent to adjournments over three days. They argue that "whether a bill has failed to become a law by operation of the Pocket Veto Clause must depend upon whether Congress withdrew . . . by bicameral action . . . as the Constitution requires for any adjourn-

H.R. 3384, a reform of the federal employees' health benefits system, by returning the bill with his objections to the Clerk of the House. *Id.* at H2-3. The Executive Brief counts the bills of the previous Ford and Carter Administrations as the "only" instances of return during intersession adjournments, omitting these two return vetoes. Exec. Br. at 46-47 & n.34. The President's objections accompanying these 1986 return vetoes explain them as consistent with, but under protest of, the ruling by the court of appeals.

ment of more than three days (Art. I, § 5, Cl. 4)," Exec. Br. at 33.

For the reasons discussed above, the proposed "three-day rule" violates the Pocket Veto Clause. As previously shown, the Clause does not provide for pocket vetoes during every adjournment of the Congress, but only during those adjournments in which the Congress "prevent [the bill's] Return." A test looking solely to whether the Congress has adjourned would read the active principle in the Clause right out of the Constitution. Judge McGowan noted that "the words of the pocket veto clause cannot support the three-day rule," and "[a]ppellees' choice of three days as a bright line thus appears to have no textual grounding at all." App. 44a. The court of appeals aptly deemed the Executive's "distinction between a three-day adjournment and a four-day adjournment" to be "arbitrary." App. 45a. "To choose a three-day line . . . simply because it is a line ignores the [Supreme] Court's mandate and the purpose of the pocket veto clause." *Id.*[44]

Most important, the "three-day" rule would have devastating implications for the balance between the political Branches. To illustrate, the bills reported back from conference committees, typically the most important bills of the Congress, totaled eighty-one in the 1981–82 Ninety-

[44] In support of their newly-proposed rule, petitioners make soaring statements about the "autonomy immanent in the congressional prerogative of 'adjournment,'" Exec. Br. at 35. Such metaphysics strains credulity when applied concretely to the mixture of three- or four-day weekends, five-day Christmas breaks as in *Kennedy v. Sampson*, and short district work periods, for Members to return to their states and district, as found in the calendar of the Congress. The Executive petitioners purport to find in adjournment, as a "premature withdrawal" of the Congress from its relationship with the President, *id.* at 34, an effective method to avoid the otherwise fruitful interaction of the Branches. However, such "withdrawals" have previously been a fertile source of enacted legislation, as discussed above, *see* Pub. L. Nos. 97-215 and 97-257, 96 Stat. 178, 818 (1982), not the effective "prevent[ion]" meant by the Pocket Veto Clause.

Seventh Congress of H.R. 4042.[45] The House parties examined how the three-day rule would apply to each of those bills. Of those eighty-two bills, the President could have pocket vetoed sixty-one, and would have had to return veto only twenty-one, pursuant to petitioners' theory of the three-day rule.[46] This means that sixty-one out of eighty-two times, petitioners' theory would make the President's veto absolute.[47] In other words, contrary to the Framers' intent, petitioners would immunize seventy-four percent of the President's vetoes of such bills from any opportunity for Congress to override, while only twenty-six percent would be subject to override.

To check the results of that study, the House parties repeated it for the eighty-three bills through conference of the last Congress, the Ninety-Eighth Congress in 1983–84.

[45] *The Calendars of the United States House of Representatives and History of Legislation*, printed daily by the House of Representatives pursuant to H.R. Rule XIII, Cl. 6, *reprinted in* House Manual, *supra* note 5, at § 748a, regularly collects the bills reported back from a conference committee in its second section, the "Bills Through Conference" (beginning in each Calendar on page 2-1). This is the well-known and standard collection of the most important bills for which presentation to the President may be anticipated, due to their having been important enough to warrant a conference, and their having progressed so far (i.e., requiring only adoption of the conference reports for presentation).

[46] A table of these bills, which was an appendix to the brief for the House parties in the court of appeals, is Addendum I to this brief.

[47] This results from the typical pattern of passing legislation only a few weeks before adjournments. The relevant period is a few weeks, not just ten days, before adjournments, because after passage, bills still require the preparations called "enrollment" before presentation. Typically it takes several days after a final vote for printing the bills on parchment, and making certain that every word and punctuation mark matches precisely what the Houses decided during the often-complex amending processes of floor and conference consideration. This enrollment requires meticulous and time-consuming checking. *See* 1 U.S.C. § 106; House Manual, *supra* note 5, §§ 572–577. Thus, the bills subject to pocket veto would include not only those voted on the eve of adjournment, but also those voted considerably earlier but only enrolled in time for presentation on the eve of adjournment.

Pursuant to petitioners' theory of the "three-day rule," the President could have pocket vetoed fifty-five of those bills, and would have had to return veto only twenty-eight.[48] In sum, in the Ninety-Eighth as in the Ninety-Seventh Congress, petitioners' "three-day rule" would have made the absolute pocket veto the norm, and the qualified veto the exception. As Judge McGowan concluded, petitioners' proposed three-day rule "deprives Congress of the final word on a significant portion of its legislation and grants the President an absolute veto." App. 39a.

Such a massive shift from qualified to absolute veto would utterly violate the Framers' intent. This Court noted the Framers' great concern that the veto be qualified rather than absolute. "'In the [Constitutional] [C]onvention . . . [t]he principal points of discussion seem to have been, whether the negative should be absolute, or qualified. . . .'" *INS v. Chadha*, 462 U.S. at 946 n.14 & 947 (quoting 1 J. Story, *Commentaries on the Constitution of the United States* 611 (3d ed. 1858)). "Congress' power to override a veto [was] intended to erect [an] enduring check[ ]" on the President's veto power. *Id.* at 957.

The records of the Constitutional Convention reflect the Framers' firm conviction that the elected Houses representing the entire nation must have the opportunity to override. In debating the Enactment Clause, a majority of delegates to the Constitutional Convention rejected an unlimited veto. They opposed "enabling any one man to stop the will of the whole," since "[n]o one man could be found so far above all the rest in wisdom," 1 M. Farrand, *The Records of the Federation Convention of 1787* 99 (1966 ed.) ("Farrand") (Roger Sherman). They feared that the President would have too much opportunity to increase his own power. *Id.* at 99 (Benjamin Franklin). They considered such an absolute power too reminiscent of British monarchy with its colonial Governors, for which "[a] hatred to its oppressions had carried the people through

[48] A table of these bills is Addendum II to this brief.

the late Revolution." *Id* at 102 (George Mason).[49] James Madison, the oracle on matters of separation of powers, made the decisive argument in favor of a limited veto, as a compromise between an absolute veto and none at all.[50] As Judge McGowan noted, "[l]ater, Hamilton himself eloquently defended the qualified veto as against the 'more harsh' absolute veto power." App. 21a n.18.

Several of the arguments relied upon by the Framers in establishing a balance between the Presidential return veto, and the Congressional opportunity to override, counsel against unnecessarily aggrandizing the pocket veto by a "three-day" rule. In operation, the pocket veto negates vital aspects of democratic ideals. The President need not even state his objections to a bill which he pocket vetoes, much less persuade others that his objections are sound. Neither he nor proponents of the bill need appeal to their supporters and opponents, to the wavering Members, and to the public, or to make concessions toward those with intermediate views, as both sides must do during the

[49] The Framers' hostile reaction to the example of the British monarchy has played a key role in this Court's conclusions about the limited nature of Executive powers. *See Youngstown*, 343 U.S. at 640–41 (Jackson, J., concurring); *Fleming v. Page*, 50 U.S. (9 How.) 603, 618 (1850). For examples of that hostility, *see, e.g.*, 1 Farrand at 65 (Pinkney) (fearing power grants that "would render the Executive a Monarchy, of the worst kind, towit [sic] an elective one"); *id.* at 66 (Randolph) (fearing "the foetus of monarchy"); *id.* (Wilson) (agreeing "that he was not governed by the British Model"); *id.* at 83 (Franklin); *id.* at 100 (Butler) ("Gentlemen seemed to think that we had nothing to apprehend from an abuse of the Executive power. But why might not a Cataline or a Cromwell arise in this Country as well as in others"); *id.* at 101 (Mason) ("We are not indeed constituting a British Government, but a more dangerous monarchy, an elective one"); *id.* at 103 (Franklin) ("The Executive will be always increasing here, as elsewhere, till it ends in a monarchy"); *id.* at 113 (Mason).

[50] "It would rarely if ever happen that the Executive constituted as ours is proposed to be would, have firmness eno' to resist the Legislature, unless backed by a certain part of the body itself," *id.* at 99–100 (Madison). The Framers settled the matter by voting to reject an absolute negative by ten to zero, *id.* at 103, and then agreeing to a two-thirds override, *id.* at 104 (voted in the affirmative without a division).

pendency of an override effort. Regardless of whether a particular veto is sustained, the democratic process during an override effort promotes the resolution of policy conflict through participation and reasoning rather than exclusion and arbitrariness, and reaffirms the primacy of democratic rule. It is alien to the Framers' intent to bar even the mere attempt at override—which must marshall two-thirds in the House and two-thirds in the Senate to succeed, a very high standard indeed—and instead to empower "one man [to] stop the will of the whole." Farrand at 99 (Roger Sherman).

A "three-day rule" is neither necessary nor beneficial for the Clause's function. As the court of appeals noted, it would "frustrate the goal of protecting Congress's right to overrule presidential disapproval without furthering the goal of protecting the President's opportunity to disapprove of legislation." App. 45a. The Congressional accommodation, embodied in the House Rule authorizing the Clerk to accept messages whenever the House is not in session, properly preserves both important functions, the Executive's veto and the Congressional override.

B. As All Parties Agree, Intersession and Intrasession Adjournments Cannot be Meaningfully Distinguished

The other alternative to the settled rule would be to allow pocket vetoes during intersession adjournments, but not intrasession adjournments. Ordinarily, each Congress has two sessions, with intrasession adjournments during the sessions, and an intersession adjournment between them. At the close of the second session of the Congress comes the final adjournment when the Congress ends; the court of appeals noted, and all parties agree, that the President can pocket veto during that final adjournment, "because under Article I, section 2, clause 1, that Congress has gone permanently out of existence and therefore cannot reconsider a vetoed bill." App. 45a. The adjournment during which H.R. 4042 was disapproved was the intersession adjournment of the Ninety-Seventh Congress, and a rule that the President could pocket veto

during intersession, but not intrasession, adjournments would have allowed him to pocket veto H.R. 4042. *The Pocket Veto Case* also concerned an intersession adjournment, and so the court of appeals considered whether a rule specifically for intersession adjournments could be justified, but concluded against it.[51]

While on many points the Executive petitioners and the House and Senate respondent parties do not agree, on this one point there is agreement. *No party urges the Court to adopt a rule distinguishing between intersession and intrasession adjournments; no party argues that the distinction between intersession and intrasession adjournments is meaningful.*[52] Of course, the positions of the political Branches do not bind this Court in its interpretation of the Constitution. *See, e.g., INS v. Chadha*, 462 U.S. at 942 n.13. However, the Branches' agreement on this point takes on significance because of their adversary interests and their otherwise opposed positions in this matter. Based on their extensive interaction over legislation as well as their analysis of the constitutional provisions, both sides refuse to urge such a distinction. The Court may appropriately give weight to the judgment of the political Branches regarding a rule concerning their lawmaking.

In any event, neither the language nor the intent of the Pocket Veto Clause would support such an alternative. The Clause makes no reference to sessions. Instead, it uses a test cued to what Congress does, specifically whether Congress prevents return by adjournment. An early draft of the Pocket Veto Clause contained reference to sessions, but the Framers deleted that language in the

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[51] The district court had made this distinction, but had done so under what it felt was the compulsion of *Kennedy v. Sampson*. App. 38a n.33, App. 129a–130a. The court of appeals found no such compulsion, and no such compulsion could apply to this Court. App. 38a n.33.

[52] From the outset in district court, the Executive petitioners have agreed that there is no practical difference today between intrasession and intersession adjournments. App. 123a (district court); App. 7a, 33a (court of appeals).

final draft.[53] As in so many matters, they chose not to impose a rigid framework on the new government, but to use an open-ended test, creating a true Constitution with room for growth.

The Clause's intent and its application to current vetoes also negate such a distinction. As discussed above, this Court has determined that the Clause's purposes are to protect the President's opportunity to consider vetoes and the Congress's opportunity to override. *See Wright v.*

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[53] As a general matter, "[n]o light is thrown on the meaning of the constitutional [pocket veto] provision in the proceedings and debates of the Constitutional Convention . . . ," *The Pocket Veto Case,* 279 U.S. at 675, because in all drafts the Framers used the same phrase as to whether Congress, by its adjournment, prevented a return. However, on this specific detail additional language in the early draft sheds light. James Wilson framed the first draft of the Clause (Document VIII in Farrand's series) with additional language in terms of sessions, or "Meeting[s]":

> If any Bill shall not be returned by the Governor within ——— Days after it shall have been presented to him, it shall be a Law, unless the Legislature, by their Adjournment, prevent its Return; in which Case it shall be returned on the first Day of the next Meeting of the Legislature.

2. M. Farrand, *The Records of the Federal Convention of 1787* 161–62 (1966 ed.). "Meeting" apparently referred to the annual session. *See* U.S. Const., art. I, sec. 4, cl. 2 ("[t]he Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December . . ."). The Clause's final version deleted the language about "Meeting[s]," rejecting the one suggested connection between the pocket veto and the mere succession of sessions in favor of a sole focus on prevention of return. For a detailed description of the drafting of the Pocket Veto Clause, *see* Kennedy, *Congress, the President, and the Pocket Veto,* 63 Va. L. Rev. 355, 359–62 (1977).

The Executive tries to read more into the change in language, arguing that by changing the prior draft the Framers rejected not merely the couching in terms of "Meeting[s]" but the tolerance for any returns during adjournments. Exec. Br. at 36. This theory goes far beyond the actual language. The drafting changes always kept the same test, of whether the Congress had "prevent[ed] [the bill's] Return." The deletions of language did not put the pocket veto only in terms of adjournments rather than in terms of prevention of return, as the Executive would have it. Rather, the change underscored the Framers' focus on prevention of return.

United States, 302 U.S. at 596; *Edwards v. United States,* 286 U.S. at 486, 493. Modern intersession adjournments neither "cut down" the President's opportunity to consider, *Edwards,* 286 U.S. at 493, nor deprive the Congress of its opportunity to reconsider, any more than intrasession adjournments. The House and Senate do not accord intersession adjournments any special significance,[54] and so neither does the President. Intersession adjournments cause no lapse in Congress's business, and Congress conducts its business after such adjournments without change. *See* App. 34a & n.27 (court of appeals' discussion of current Congressional rules).

The situation was starkly different at the time of the readily distinguishable *Pocket Veto Case* in 1929. As the court of appeals noted, prior to the passage of the Twentieth Amendment in 1933, the intersession adjournment "divided two very different sessions of Congress, a 'long' session and a 'lame duck' session," App. 33a n.26. The "lame duck" session was considered to have very different characteristics from the "long" session.[55] Congress

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[54] Originally, from 1789 to 1818, intersession adjournments did cause legislative business to lapse, following the model of Parliament. *Constitution, Jefferson's Manual and Rules of the House of Representatives, supra* note 5, at § 386. However, in 1818, the House accepted the view that allowing matters to continue in a subsequent session would avoid "unnecessary repetition of labor," and lead to "expedition . . . in acting on the public business," 32 Annals of Cong. 1402 (1818) (Rep. Hopkinson). *See generally* V *Hind's Precedents of the House of Representatives* § 6727, at 873 (1906).

The House rule in this regard was made a joint rule with the Senate in 1848. Cong. Globe, 30th Cong., 1st Sess. 994 (1848) (House adoption); *id.* at 1085 (Senate adoption). Both chambers extended the rule to committee business as it increased in importance. Cong. Globe, 36th Cong., 1st Sess. 1179, 1187 (1860) (House); *History of the Committee on Rules and Administration, United States Senate,* S. Doc. No. 27, 96th Cong., 1st Sess. 28 (1980) (Senate Rule 52 in rule recodification of 1868).

[55] As the court of appeals noted, "[w]ith many of its members having given up or lost their seats for the following term and with only a few months in which to work, Congress during its second session was unable to give serious consideration to many of the items

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took an adjournment between these very different sessions from summer to winter, lasting, for example, five and a half months in the *Pocket Veto Case.*[56] In abolishing the annual "lame duck" session, the Twentieth Amendment abolished the difference between sessions, and the reasons for the lengthy break, characterizing the intersession adjournment at the time of the *Pocket Veto Case.*

Today, the intersession adjournment typically serves merely as the break for Christmas and New Year's, a

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before it." App. 34a n.26. "[A]djournment of the first session hence in fact often precluded reconsideration." *Id.* The legislative history of the Twentieth Amendment reflects voluminously these pre-Twentieth Amendment circumstances that made the intersession adjournment of that era so significant. See, e.g., *Proposed Amendment to the Constitution of the United States . . . : Hearings Before the House Comm. on Election of President, Vice President, and Representatives in Congress,* 69 Cong., 1st Sess. (1926); *Proposed Constitutional Amendments . . . : Hearings Before the Comm. on Election of the President, Vice President, and Representatives in Congress,* 71st Cong., 2d Sess. (1930); *Amendment to Constitution Relating to Election of President, Vice President, and Representatives of Congress: Hearings Before House Comm. on Rules,* 71st Cong., 3d Sess. (1931); *Proposed Constitution Amendment: Hearing Before the House Comm. on the Election of the President, Vice President, and Representatives in Congress,* 72nd Cong., 1st Sess. (1932).

Representative Celler gave a typical description of the different character of the "short" or "lame duck" session of that era, by describing the Members who populated it: "A lame duck . . . is usually tractable, docile, and is easily tamed. So it is with lame ducks in this House. . . ." 75 Cong. Rec. 3828 (1932). He noted specifically a consideration that made such lame ducks poor choices for independent evaluation of Presidential vetoes: they "have been hit with the shot of defeat by their constituents, and they become very lame, docile, and tractable, and when they have jobs dangled before them they do the bidding of the Executive or those who may be in power." *Id.*

[56] As the court of appeals observed, at that time "[t]he first session of each Congress began on the first Monday in December, as provided in U.S. Const., art. I, § 4, cl. 2, and usually, lasted well into spring. The second session commenced the following December, after the November congressional elections, and had to adjourn by March 3." App 33a–34a n.26.

function served before the Twentieth Amendment by the intrasession adjournment. *See Kennedy v. Sampson,* 511 F.2d at 442–45 (listing pre-1933 intrasession adjournments). As the court of appeals noted, "[i]n stark contrast to the five or six month intersession adjournments typical at the time of the *Pocket Veto Case,* intersession adjournments of the modern era have an average length of only four weeks, and are thus often even shorter than intrasession adjournments." App. 33a. Petitioners agree that the duration of intersession adjournments has correspondingly diminished, Petition for Certiorari at 23, as befits their current role. Consequently, neither Branch urges that the distinction between intersession and intrasession adjournments should be accorded any significance, and it has no significance.

V. THE CASE IS NOT MOOT

Finally, petitioners' contention that the case is moot is without merit. The Senate and House parties seek as relief the publication of H.R. 4042 as a public law.[57] Petitioners contend that because H.R. 4042 applies to a past fiscal year, publication of the bill now would vindicate no interest and that the case is moot. Exec. Br. at 9–12. However, the Senate and House parties' interest is in the lawmaking process, not execution.[58] Petitioner Burke publishes all laws enacted by the Congress, whatever their duration, including many that have expired.[59] The Senate and House parties validly seek to have petitioner Burke publish H.R. 4042 as a public law as relief from

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[57] H.R. 4042 has still not been published as a law, despite the declaratory judgment entered below pursuant to the mandate of the court of appeals.

[58] Additionally, questions remain about the significance of the fiscal year to which the statute applies, in light of the Executive's continuing responsibilities to account for that period. These are addressed in the Senate brief.

[59] *See, e.g.,* H.J. Res. 653, 656, 659, 663, 98th Cong., 2d Sess. (1984) (respectively Pub. L. Nos. 98–441, 98–453, 98–455, and 98–461, 98 Stat. 1699, 1731, 1747, and 1814) (continuing resolutions enacted, respectively, October 3, 5, 6, and 10, each expiring almost immediately).

the nullification of their lawmaking processes. Petitioners offer no cogent reason why this law, unlike all others, should go unpublished, only variations on their previously discussed argument against standing. As a court noted in rejecting a similar mootness argument in a previous pocket veto case, "[t]o date the defendants have not published H.R. 10511 and H.R. 14225 [two pocket vetoed bills] as laws and it is their failure to perform this duty which is in contest here." *Kennedy v. Jones,* 412 F. Supp. 353, 356 (D.D.C. 1976).

Petitioners' analogy to *National Organization for Women, Inc. (NOW) v. Idaho,* 459 U.S. 809 (1982), is farfetched. In that case, states sued to require acknowledgment of their asserted rescission of the ratification of the proposed Equal Rights Amendment. When the amendment failed, this Court held the case moot. Petitioners err in contending that H.R. 4042 "can enjoy no greater legal status at this late date than could the unsuccessful constitutional amendment at issue in *NOW.*" Exec. Br. at 12 n.7. That amendment failed. H.R. 4042 became law. There is no comparison between the mere desire in *NOW v. Idaho* to record an unsuccessful effort at enactment, and the interest here in vindicating the successful lawmaking process. That interest can be vindicated and the injury rectified, and they should be.

CONCLUSION

This case presents a narrow question of whether standing exists when Congress and the President reach an impasse over a justiciable question of the lawmaking process which only this Court can resolve. The Executive proposes a "three-day rule" which would make the absolute Presidential pocket veto the rule for important bills, and the qualified veto the exception. Quite properly, the court of appeals rejected that as contrary to the Framers' intent. This Court should uphold standing, reject the proposed expansion of the absolute veto, and affirm the court of appeals, in declaring H.R. 4042 to be a law.

Respectfully submitted,

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ADDENDUM I: MAJOR BILLS OF THE 97th CONGRESS: POCKET VETO OR RETURN VETO

No.	Bill No.	Name	Date of presentation	Status of Congress 10 days after presentation	Subject to pocket veto	Actual fate
1	H.R. 3512	Supplemental Appropriation and Recission Act.	June 5, 1981	In session	No	P.L. 97-12.
2	H.R. 3520	Steel Industry Compliance Extension Act.	July 8, 1981	In session	No	P.L. 97-23.
3	H.R. 31	Cash Discount Act	July 31, 1981	Intra adj.[1]	Pocket	P.L. 97-25.
4	S. 694	Department of Defense, Supplemental Authorization Act.	Aug. 5, 1981	Intra adj.[1]	Pocket	P.L. 97-39.
5	H.R. 4242	Economic Recovery Tax Act	Aug. 12, 1981	Intra adj.[1]	Pocket	P.L. 97-34.
6	H.R. 3982	Reconciliation Act, Omnibus	Aug. 12, 1981	Intra adj.[1]	Pocket	P.L. 97-35.
7	H.J. Res. 325	Continuing Appropriations	Oct. 1, 1981	Intra adj.[7]	Pocket	P.L. 97-51.
8	S. 304	National Tourism Policy Act	Oct. 5, 1981	In session	No	P.L. 97-63.
9	S. 1181	Uniformed Services Pay Act	Oct. 14, 1981	In session	No	P.L. 97-60.
10	S. 815	Defense Department Authorization Act.	Nov. 19, 1981	In session	No	P.L. 97-86.
11	H.R. 4144	Energy and Water Development Appropriations.	Nov. 23, 1981	1 House recess	No	P.L. 97-88.
12	H.R. 3454	Intelligence Authorization Act	Nov. 23, 1981	1 House recess	No	P.L. 97-89.

13	H.R. 3413	Department of Energy National Security and Military Applications of Nuclear Energy Authorization.	Nov. 23, 1981	1 House recess	No	P.L. 97-90.
14	H.R. 4522	District of Columbia Appropriations.	Nov. 23, 1981	1 House recess	No	P.L. 97-91.
15	H.J. Res. 357	Appropriations, Continuing, Further.	Nov. 23, 1981	1 House recess	No	Return Vetoed.
16	S. 1098	NASA Authorization	Dec. 10, 1981	Inter adj.[2]	Pocket	P.L. 97-96.
17	H.R. 3455	Military Construction Authorization.	Dec. 11, 1981	Inter adj.[2]	Pocket	P.L. 97-99.
18	H.R. 4035	Interior and Related Agencies Appropriations.	Dec. 11, 1981	Inter adj.[2]	Pocket	P.L. 97-100.
19	H.R. 4034	Housing and Urban Development—Independent Agencies Appropriations.	Dec. 11, 1981	Inter adj.[2]	Pocket	P.L. 97-101.
20	H.R. 4209	Transportation and Related Agencies Appropriations.	Dec. 16, 1981	Inter adj.[2]	Pocket	P.L. 97-102.
21	H.R. 4119	Agriculture, Rural Development and Related Agencies Appropriations.	Dec. 17, 1981	Inter adj.[2]	Pocket	P.L. 97-103.
22	H.R. 4241	Military Construction Appropriations.	Dec. 17, 1981	Inter adj.[2]	Pocket	P.L. 97-106.
23	S. 1086	Older Americans Act Amendments.	Dec. 17, 1981	Inter adj.[2]	Pocket	P.L. 97-115.
24	H.R. 4503	Water Pollution Control Act Amendments.	Dec. 17, 1981	Inter adj.[2]	Pocket	P.L. 97-117.

ADDENDUM I: MAJOR BILLS OF THE 97th CONGRESS: POCKET VETO OR RETURN VETO—Continued

No.	Bill No.	Name	Date of presentation	Status of Congress 10 days after presentation	Subject to pocket veto	Actual fate
25	H.R. 4331	Social Security Minimum Benefits.	Dec. 17, 1981	Inter adj.[2]	Pocket	P.L. 97-123.
26	S. 1211	Toxic Substance Control Act Extension.	Dec. 17, 1981	Inter adj.[2]	Pocket	P.L. 97-129.
27	H.R. 3567	Export Administration Amendments Act.	Dec. 17, 1981	Inter adj.[2]	Pocket	P.L. 97-145.
28	S. 884	Agriculture and Food Act	Dec. 21, 1981	Inter adj.[2]	Pocket	P.L. 97-98.
29	S. 1196	International Security and Development Cooperation Act.	Dec. 22, 1981	Inter adj.[2]	Pocket	P.L. 97-113.
30	H.R. 4995	Department of Defense Appropriation Act.	Dec. 22, 1981	Inter Adj.[2]	Pocket	P.L. 97-114.
31	H.R. 4559	Foreign Assistance Appropriations.	Dec. 22, 1981	Inter adj.[2]	Pocket	P.L. 97-121.
32	S. 1503	Petroleum Allocation Act, Standby.	Mar. 9, 1982	Brief recess	No	Return Vetoed.
33	H.R. 4	Intelligence Identities Protection Act.	June 15, 1982	Brief recess	No	P.L. 97-200.
34	H.R. 5922	Appropriations, Supplemental, Urgent.	June 24, 1982	Intra adj.[3]	Pocket	Return Vetoed.
35	H.R. 6685	Supplemental Appropriations, Urgent.	July 16, 1982	In session	No	P.L. 97-216.
36	S. 2332	Energy, Emergency Preparedness Act, National.	Aug. 2, 1982	In session	No	P.L. 97-229.
37	S. 1193	International Communication Agency and Board for International Broadcasting Appropriations, Authorization.	Aug. 12, 1982	Intra adj.[4]	Pocket	P.L. 97-241.
38	H.R. 6530	Mount St. Helens National Volcanic Area, Establish.	Aug. 20, 1982	Intra adj.[4]	Pocket	P.L. 97-243.
39	H.R. 6863	Supplemental Appropriation Act	Aug. 23, 1982	Intra adj.[4]	Pocket	Return Vetoed Overridden, P.L. 97-257.
40	S. 2248	Department of Defense Authorization Act.	Aug. 27, 1982	In session	No	P.L. 97-252.
41	H.R. 6955	Omnibus Budget Reconciliation Act.	Aug. 27, 1982	In session	No	P.L. 97-253.
42	H.R. 4961	Miscellaneous Revenue Act	Sept. 2, 1982	In session	No	P.L. 97-248.
43	H.R. 3239	Federal Communications Commission Authorization Act.	Sept. 2, 1982	In session	No	P.L. 97-259.
44	H.R. 3663	Bus Regulatory Act	Sept. 8, 1982	In session	No	P.L. 97-261.
45	S. 923	Pre-Trial Services Act	Sept. 16, 1982	In session	No	P.L. 97-267.
46	H.R. 6068	Intelligence Authorization Act	Sept. 16, 1982	In session	No	P.L. 97-269.
47	H.R. 6956	Housing and Urban Development-Independent Agencies Appropriations.	Sept. 30, 1982	Intra adj.[5]	Pocket	P.L. 97-272.

ADDENDUM I: MAJOR BILLS OF THE 97th CONGRESS: POCKET VETO OR RETURN VETO—Continued

No.	Bill No.	Name	Date of presentation	Status of Congress 10 days after presentation	Subject to pocket veto	Actual fate
48	S. 1409	Buffalo Bill Dam and Reservoir Enlargement in Wyoming.	Oct. 1, 1982	Intra adj.[5]	Pocket	P.L. 97-293
49	S. 2852	Sallie Mae Technical Amendments Act.	Oct. 1, 1982	Intra adj.[5]	Pocket	P.L. 97-301.
50	H.R. 6133	Endangered Species Act Amendments.	Oct. 1, 1982	Intra adj.[5]	Pocket	P.L. 97-304.
51	H.J. Res. 599	Continuing Appropriations	Oct. 2, 1982	Intra adj.[5]	Pocket	P.L. 97-276.
52	H.R. 5930	Aviation Insurance Program Extension.	Oct. 2, 1982	Intra adj.[5]	Pocket	P.L. 97-309.
53	H.R. 6976	Missing Children Act	Oct. 4, 1982	Intra adj.[5]	Pocket	P.L. 97-292.
54	S. 2586	Military Construction Authorization Act.	Oct. 4, 1982	Intra adj.[5]	Pocket	P.L. 97-321
55	H.R. 6968	Military Construction Appropriations.	Oct. 4, 1982	Intra adj.[5]	Pocket	P.L. 97-323.
56	S. 734	Export Trade Services	Oct. 5, 1982	Intra adj.[5]	Pocket	P.L. 97-290.
57	S. 2036	Job Training Partnership Act	Oct. 5, 1982	Intra adj.[5]	Pocket	P.L. 97-300.
58	H.R. 5890	NASA Authorization Act	Oct. 5, 1982	Intra adj.[5]	Pocket	P.L. 97-324.
59	S. 2457	District of Columbia Federal Payment Increase.	Oct. 5, 1982	Intra adj.[5]	Pocket	P.L. 97-334.
60	S. 1018	Coastal Barrier Resources Act	Oct. 12, 1982	Intra adj.[5]	Pocket	P.L. 97-348
61	H.R. 6267	Depository Institutions Amendments.	Oct. 13, 1982	Intra adj.[5]	Pocket	P.L. 97-320.
62	H.R. 4717	Taxes, LIFO Recapture Effective Date.	Oct. 13, 1982	Intra adj.[5]	Pocket	P.L. 97-362.
63	H.R. 4441	Copyright Office in the Library of Congress, Fees Submitted to, With Respect To.	Oct. 13, 1982	Intra adj.[5]	Pocket	P.L. 97-366
64	H.R. 7019	Transportation and Related Agencies Appropriations.	Dec. 17, 1982	Final adj.[6]	Pocket	P.L. 97-369.
65	H.R. 7072	Agriculture, Rural Development and Related Agencies Appropriations.	Dec. 17, 1982	Final adj.[6]	Pocket	P.L. 97-370.
66	H.J. Res. 631	Continuing Appropriations, Further.	Dec. 20, 1982	Final adj.[6]	Pocket	P.L. 97-377.
67	H.R. 7144	District of Columbia Appropriations.	Dec. 21, 1982	Final adj.[6]	Pocket	P.L. 97-378.
68	H.R. 6946	False Identification Crime Control Act.	Dec. 21, 1982	Final adj.[6]	Pocket	P.L. 97-398.
69	S. 2623	Indians, Tribally Controlled Community College Act Extension.	Dec. 22, 1982	Final adj.[6]	Pocket	Pocket Vetoed.
70	H.R. 7356	Interior and Related Agencies Appropriations.	Dec. 23, 1982	Final adj.[6]	Pocket	P.L. 97-394.
71	H.R. 5238	Orphan Drug Act	Dec. 23, 1982	Final adj.[6]	Pocket	P.L. 97-414.
72	H.R. 2330	Nuclear Regulatory Commission Authorization.	Dec. 23, 1982	Final adj.[6]	Pocket	P.L. 97-415.

ADDENDUM I: MAJOR BILLS OF THE 97th CONGRESS: POCKET VETO OR RETURN VETO—Continued

No.	Bill No.	Name	Date of presentation	Status of Congress 10 days after presentation	Subject to pocket veto	Actual fate
73	H.R. 6211	Surface Transportation Assistance Act.	Jan. 3, 1983	Final adj.[6]	Pocket	P.L. 97-424.
74	H.R. 5447	Futures Trading Act	Jan. 3, 1983	Final adj.[6]	Pocket	P.L. 97-444.
75	H.R. 4566	Tariff Schedules Amendments	Jan. 3, 1983	Final adj.[6]	Pocket	P.L. 97-446.
76	H.R. 6056	Technical Corrections Act	Jan. 3, 1983	Final adj.[6]	Pocket	P.L. 97-448.
77	H.R. 5002	Fishery Conservation and Management Improvement.	Jan. 3, 1983	Final adj.[6]	Pocket	P.L. 97-453.
78	H.R. 7093	Virgin Islands Taxes Revision	Jan. 3, 1983	Final adj.[6]	Pocket	P.L. 97-455.
79	H.R. 6094	U.S. International Trade Commission, U.S. Customs Service, U.S. Trade Representative Authorization.	Jan. 3, 1983	Final adj.[6]	Pocket	P.L. 97-456.
80	H.R. 3420	Pipeline Safety Authorization Act.	Jan. 3, 1983	Final adj.[6]	Pocket	P.L. 97-468.
81	H.R. 5470	Periodic Payment Settlement Act	Jan. 3, 1983	Final adj.[6]	Pocket	P.L. 97-473.
82	H.R. 3963	Contract Services for Drug Dependent Federal Offenders Act Amendments.	Jan. 3, 1983	Final adj.[6]	Pocket	Pocket Vetoed.

This chart analyzes the bills listed in the 97th Congress's final House Calendar section on Bills Through Conference. In the column, "Status of Congress Ten Days After Presentation," "in session" means the originating House of the bill was in session ten days after presentation (Sundays excluded), regardless of the status of the nonoriginating House; "one house recess" means the originating House was in recess while the nonoriginating House was in session; "brief recess" means both Houses were in recess for three days or less, so that no adjournment resolution was necessary, "intra adj." means an intrasession adjournment; "inter adj." means the intersession adjournment; "final adj." means the final adjournment.

In the column, "Subject to Pocket Veto," "pocket" means that ten days after presentation Congress was in an intrasession, intersession, or final adjournment. Several bills labeled "pocket" were return vetoed, either because the President return vetoed them before the end of ten days, or because the President returned them despite Congress being in adjournment.

The dates of adjournment, stated below in the footnotes, were from *1983—84 Congressional Directory* at 423, 425. the House and Senate status when not governed by adjournment resolution (in session, 1 House recess, or brief recess) is from House and Senate Calendars.

[1] S. Con. Res. 27 provided for adjournment of the House Aug. 4 to Sept. 9, 1981, and of the Senate Aug. 3 to Sept. 9, 1981.

[2] S. Con. Res. 57 provided for *sine die* adjournment of the Congress Dec. 16, 1981.

[3] H. Con. Res. 367 provided for adjournment of the House any day between June 28 and July 2, 1982 to July 12, 1982, and of the Senate July 1 or July 2, 1982 to July 12, 1982. Pursuant to it, the House was in recess July 1 to July 12, 1982, and the Senate was in recess July 1 to July 12, 1982.

[4] H. Con. Res. 399 provided for adjournment of the House Aug. 20 to Sept. 8, 1982, and of the Senate Aug. 19, Aug. 20, or Aug. 21 to Sept. 8, 1982. Pursuant to it, the Senate was in recess Aug. 20 to Sept. 8, 1982.

[5] H. Con. Res. 421 provided for adjournment of Congress Oct. 1 or Oct. 2, 1982 to Nov. 29, 1982. Pursuant to it, Congress was in recess Oct. 1 to Nov. 29, 1982.

[6] H. Con. Res. 438 provided for *sine die* adjournment of the House Dec. 20 or Dec. 21, 1982, and of the Senate anytime before Jan. 3, 1983. Pursuant to it, Congress adjourned Dec. 23, 1982.

[7] H. Con. Res. 201 provided for adjournment of the House Oct. 7 to Oct. 13, 1981, and of the Senate Oct. 7 to Oct. 14, 1981.

ADDENDUM II: MAJOR BILLS OF THE 98th CONGRESS: POCKET VETO OR RETURN VETO

No.	Bill No.	Name	Date of presentation	Status of Congress 10 days after presentation	Subject to pocket veto	Actual fate
1	H.R. 1718	Emergency Appropriations, 1983	Mar. 24, 1983	In session	No	P.L. 98-8.
2	H.R. 1900	Social Security Act Amendments of 1983.	Apr. 12, 1983	Brief recess	No	P.L. 98-21.
3	H.R. 3133	Housing and Urban Development—Independent Agencies Appropriation, 1984.	July 1, 1983	In session	No	P.L. 98-45.
4	H.R. 3132	Energy and Water Development Appropriation, 1984.	July 5, 1983	Brief recess	No	P.L. 98-50.
5	H.R. 3392	Freeze tobacco support for 1983 crop at 1982 level.	July 20, 1983	In session	No	P.L. 98-59.
6	H.R. 3135	Legislative Branch Appropriations, 1984.	July 5, 1983	Brief recess	No	P.L. 98-51.
7	S. 273	Minority Small Business Pilot Procurement Act of 1983.	July 1, 1983	In session	No	P.L. 98-47.
8	H.R. 2973	Interest and Dividends tax withholding repeal.	Aug. 3, 1983	Inter adj.[1]	Pocket	P.L. 98-67.
9	H.R. 3069	Supplemental Appropriations, 1983.	July 29, 1983	Inter adj.[1]	Pocket	P.L. 98-63.

10	S. 272	Small business access to Federal procurement information, approve.	Aug. 2, 1983	Inter adj.[1]	Pocket	P.L. 98-72.
11	H.R. 3329	Transportation and Related Agencies Appropriations, 1984.	Aug. 5, 1983	Inter adj.[1]	Pocket	P.L. 98-78.
12	S. 675	Department of Defense, Fiscal Year 1984, Authorization.	Sept. 19, 1983	In session	No	P.L. 98-94.
13	H.R. 2972	Military Construction Authorization, Fiscal Year 1984.	Sept. 28, 1983	Brief recess	No	P.L. 98-115.
14	H.R. 3263	Military Construction Appropriation, 1984.	Sept. 29, 1983	Brief recess	No	P.L. 98-116.
15	H.R. 3415	District of Columbia Appropriation, 1984.	Oct. 1, 1983	Brief recess	No	P.L. 98-125.
16	H.J. Res. 368	Continuing Appropriations, 1984	Oct. 1, 1983	Brief recess	No	P.L. 98-107.
17	H.R. 3363	Interior and Related Agencies Appropriations, 1984.	Oct. 25, 1983	Brief recess	No	P.L. 98-146.
18	H.R. 3913	Labor, Health and Human Services and Education Appropriations, 1984.	Oct. 27, 1983	In session	No	P.L. 98-139.
19	H.R. 3929	Extend Federal Supplemental Compensation Act of 1982.	Oct. 24, 1983	In session	No	P.L. 98-135.
20	H.J. Res. 413	Continuing Appropriations, 1984	Nov. 14, 1983	Final adj.[2]	Pocket	P.L. 98-151.
21	H.R. 3222	Commerce, Justice, and State Appropriations, 1984.	Nov. 17, 1983	Final adj.[2]	Pocket	P.L. 98-166.
22	H.J. Res. 308	Debt Limit, Public, Temporary increase in, provide.	Nov. 18, 1983	Final adj.[2]	Pocket	P.L. 98-161.

ADDENDUM II: MAJOR BILLS OF THE 98th CONGRESS: POCKET VETO OR RETURN VETO—Continued

No.	Bill No.	Name	Date of presentation	Status of Congress 10 days after presentation	Subject to pocket veto	Actual fate
23	H.R. 3959	Supplemental Appropriations, 1984.	Nov. 29, 1983	Final adj.[2]	Pocket	P.L. 98-181.
24	H.R. 3385	Cotton Producers, Payment-in-kind Program.	Nov. 22, 1983	Final adj.[2]	Pocket	P.L. 98-180.
25	H.R. 4185	Defense Appropriations, 1984	Nov. 29, 1983	Final adj.[2]	Pocket	P.L. 98-212.
26	H.R. 2780	State and Local Fiscal Assistance Amendments of 1983.	Nov. 18, 1983	Final adj.[2]	Pocket	P.L. 98-185.
27	S. 726	Tribally Controlled Community College Assistance Act of 1978.	Nov. 21, 1983	Final adj.[2]	Pocket	P.L. 98-192.
28	H.R. 1035	Education Consolidation and Improvement Act of 1981.	Nov. 29, 1983	Final adj.[2]	Pocket	P.L. 98-211.
29	H.R. 2915	State Department and Related Agencies Act, Authorizations.	Nov. 22, 1983	Final adj.[2]	Pocket	P.L. 98-164.
30	H.R. 2906	Arms Control and Disarmament Act, Authorization.	Nov. 23, 1983	Final adj.[2]	Pocket	P.L. 98-202.
31	H.R. 2968	Intelligence Authorization Act, 1984.	Nov. 29, 1983	Final adj.[2]	Pocket	P.L. 98-215.
32	H.R. 2077	Physicians Comparability Allowance Amendments, 1983.	Nov. 17, 1983	Final adj.[2]	Pocket	P.L. 98-168.
33	S. 1340	Rehabilitation Act of 1973 and Developmental Disability Assistance and Bill of Rights Act, extend.	Feb. 10, 1984	In session	No	P.L. 98-221.
34	S. 47	Shipping Act of 1983	Mar. 8, 1984	In session	No	P.L. 98-237.
35	H.R. 4194	Energy Policy and Conservation Act.	Mar. 20, 1984	Brief recess	No	P.L. 98-239.
36	H.J. Res. 493	Health and Human Services, Urgent Supplemental Appropriations for 1984.	Mar. 29, 1984	In session	No	P.L. 98-248
37	H.R. 4072	Wheat Improvement Act of 1983	Apr. 5, 1984	Intra adj.[3]	Pocket	P.L. 98-258.
38	S. 1852	Defense Production Act of 1950, extend.	Apr. 12, 1984	In session	No	P.L. 98-265.
39	S. 64	Irish Wilderness Act of 1983	May 9, 1984	In session	No	P.L. 98-289.
40	S. 1129	Domestic Volunteer Service Act of 1984.	May 10, 1984	In session	No	P.L. 98-288.
41	H.R. 5692	Debt Limit Extension	May 25, 1984	In session	No	P.L. 98-302.
42	H.J. Res. 492	Supplemental Appropriations, Agriculture, 1984.	June 27, 1984	Intra adj.[4]	Pocket	P.L. 98-332.
43	H.R. 4170	Tax Reform Act	July 6, 1984	Intra adj.[4]	Pocket	P.L. 98-369.
44	H.R. 5653	Energy and Water Development Appropriation, 1985.	July 6, 1984	Intra adj.[4]	Pocket	P.L. 98-360.
45	H.R. 5713	Housing and Urban Development Independent Agencies Appropriations, 1985.	July 6, 1984	Intra adj.[4]	Pocket	P.L. 98-371.
46	H.R. 5154	NASA Authorization Act, 1985	July 6, 1984	Intra adj.[4]	Pocket	P.L. 98-361.

ADDENDUM II: MAJOR BILLS OF THE 98th CONGRESS: POCKET VETO OR RETURN VETO—Continued

No.	Bill No.	Name	Date of presentation	Status of Congress 10 days after presentation	Subject to pocket veto	Actual fate
47	H.R. 5753	Legislative Branch Appropriation, 1985.	July 6, 1984	Intra adj.[4]	Pocket	P.L. 98-367.
48	H.R. 5174	Bankruptcy Amendments of 1984	July 6, 1984	Intra adj.[4]	Pocket	P.L. 98-353.
49	H.R. 1492	Columbus Quincentenary Jubilee Act.	Aug. 3, 1984	Intra adj.[5]	Pocket	P.L. 98-375.
50	S. 1429	Small Business Development Center Programs.	Aug. 9, 1984	Intra adj.[5]	Pocket	P.L. 98-395.
51	H.R. 4325	Child Support Enforcement Amendments of 1983.	Aug. 10, 1984	Intra adj.[5]	Pocket	P.L. 98-378.
52	H.R. 5604	Military Construction Authorization Act, 1985.	Aug. 20, 1984	Intra adj.[5]	Pocket	P.L. 98-407.
53	H.R. 5712	Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations, 1985.	Aug. 20, 1984	Intra adj.[5]	Pocket	P.L. 98-411.
54	H.R. 6040	Supplemental Appropriations, Second, 1984.	Aug. 20, 1984	Intra adj.[5]	Pocket	P.L. 98-396.
55	H.R. 3755	Social Security Disability Benefits Reform Act.	Sept. 27, 1984	In session	No	P.L. 98-460.
56	S. 38	Longshoreman's and Harbor Worker's Compensation Act.	Sept. 26, 1984	Brief recess	No	P.L. 98-426.
57	H.R. 5297	Civil Aeronautics Board Sunset Act, 1984.	Sept. 26, 1984	Brief recess	No	P.L. 98-443.
58	S. 2603	Older Americans Act of 1965, appropriations, authorization for, extend.	Oct. 1, 1984	In session	No	P.L. 98-459.
59	H.R. 5167	Defense Authorization Act, 1985, Department of.	Oct. 12, 1984	Final adj.[6]	Pocket	P.L. 98-525.
60	H.R. 1904	Child Abuse Amendments of 1984	Oct. 2, 1984	Final adj.[6]	Pocket	P.L. 98-457.
61	S. 1841	Productivity and Innovation Act of 1983, National.	Oct. 3, 1984	Final adj.[6]	Pocket	P.L. 98-462.
62	S. 1097	Satellite Program Authorization Act.	Oct. 9, 1984	Final adj.[6]	Pocket	Pocket Vetoed.
63	H.R. 2878	Library Services and Construction Act Amendments of 1983.	Oct. 5, 1984	Final adj.[6]	Pocket	P.L. 98-480.
64	S. 2819	Housing and Urban-Rural Recovery Act of 1983, correction to.	Oct. 5, 1984	Final adj.[6]	Pocket	P.L. 98-479.
65	S. 1146	Aviation Drug Trafficking Control Act.	Oct. 9, 1984	Final adj.[6]	Pocket	P.L. 98-499.
66	S. 2303	Alcohol and Drug Abuse and Mental Health Services Block Grant, revise and extend.	Oct. 10, 1984	Final adj.[6]	Pocket	P.L. 98-509.
67	S. 905	"Archives and Records Administration Act of 1983, National".	Oct. 9, 1984	Final adj.[6]	Pocket	P.L. 98-497.
68	S. 2496	Adult Education Act Amendments of 1984.	Oct. 10, 1984	Final adj.[6]	Pocket	P.L. 98-511.

ADDENDUM II: MAJOR BILLS OF THE 98th CONGRESS: POCKET VETO OR RETURN VETO—Continued

No.	Bill No.	Name	Date of presentation	Status of Congress 10 days after presentation	Subject to pocket veto	Actual fate
69	S. 2166	Indian Health Care Amendments of 1984.	Oct. 10, 1984	Final adj.[6]	Pocket	Pocket Vetoed.
70	H.R. 4164	Vocational Technical Education Act, 1984.	Oct. 12, 1984	Final adj.[6]	Pocket	P.L. 98-524.
71	S. 2048	Organ Procurement and Transplantation Act.	Oct. 10, 1984	Final adj.[6]	Pocket	P.L. 98-507.
72	H.R. 5603	Alcohol and Drug Abuse and Mental Health Amendments of 1984.	Oct. 12, 1984	Final adj.[6]	Pocket	P.L. 98-527.
73	S. 540	Arthritis and Musculoskeletal and Skin Diseases, National Institute of, Establish.	Oct. 19, 1984	Final adj.[6]	Pocket	Pocket Vetoed.
74	S. 1330	Public Capital Investment Act of 1983.	Oct. 10, 1984	Final adj.[6]	Pocket	P.L. 98-501.
75	H.R. 2867	Hazardous Waste Control and Enforcement Act of 1983.	Oct. 29, 1984	Final adj.[6]	Pocket	P.L. 98-616.
76	S. 2616	Adolescent Family Life Demonstration Program.	Oct. 12, 1984	Final adj.[6]	Pocket	P.L. 98-512.
77	S. 2574	Nurse Education Amendments of 1984.	Oct. 19, 1984	Final adj.[6]	Pocket	Pocket Vetoed.
78	H.R. 3398	Tariff treatment with respect to certain articles, change.	Oct. 29, 1984	Final adj.[6]	Pocket	P.L. 98-573.
79	H.R. 6028	Appropriations, Labor, Health and Human Services, and Education, 1985.	Oct. 29, 1984	Final adj.[6]	Pocket	P.L. 98-619.
80	H.J. Res. 648	Continuing Appropriations, 1985	Oct. 12, 1984	Final adj.[6]	Pocket	P.L. 98-473.
81	S. 66	Cable Telecommunications Act of 1983.	Oct. 19, 1984	Final adj.[6]	Pocket	P.L. 98-549.
82	H.R. 6027	Local Government Antitrust Act of 1984.	Oct. 19, 1984	Final adj.[6]	Pocket	P.L. 98-544.
83	H.R. 4209	Small Business Administration break-out procurement center representatives, provide.	Oct. 19, 1984	Final adj.[6]	Pocket	P.L. 98-577.

This chart analyzes the bills listed in the 98th Congress's final House Calendar section on Bills Through Conference. In the column, "Status of Congress Ten Days After Presentation," "in session" means the originating House of the bill was in session ten days after presentation (Sundays excluded), regardless of the status of the nonoriginating House; "brief recess" means both Houses were in recess for three days or less, so that no adjournment resolution was necessary; "intra adj." means an intrasession adjournment; "inter adj." means the intersession adjournment; "final adj." means the final adjournment.

In column, "Subject to Pocket Veto," "pocket" means that ten days after presentation Congress was in an intrasession, intersession, or final adjournment. Several bills labeled "pocket" were returned vetoed, either because the President return vetoed them before the end of ten days, or because the President returned them despite Congress being in adjournment.

The dates of adjournment, stated below in the footnotes, were from 1985-86 *Congressional Directory* at 426-427. The House and Senate status when not governed by adjournment resolution (in session, or brief recess) is from House and Senate Calendars.

[1] H. Con. Res. 153 provided for adjournment of the House Aug. 4 or Aug. 5, 1983 to Sept. 12, 1983, and of the Senate Aug. 3, Aug. 4, or Aug. 5 to Sept. 12, 1983.

[2] H. Con. Res. 221 provided for *sine die* adjournment of the Congress Nov. 17, Nov. 18, or Nov. 19, 1983.

[3] S. Con. Res. 103 provided for adjournment of the House April 12 or April 13, 1984 to April 24, 1984 and of the Senate April 11, April 12, or April 13 to April 24, 1984.

[4] H. Con. Res. 334 provided for adjournment of the House June 29, 1984 to July 23, 1984 and of the Senate June 29 or June 30, 1984 to July 23, 1984.

[5] H. Con. Res. 351 provided for adjournment of Congress Aug. 10, 1984 to Sept. 5, 1984.

[6] H. Con. Res. 377 provided for *sine die* adjournment of the House Oct. 11 or Oct. 12, 1984. S. Con. Res. 155 provided for *sine die* adjournment of the Senate Oct. 12–18 or 19, 1984.

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